(13)

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1926

No. 815

HOPE NATURAL GAS COMPANY, PLAINTIFF IN ERROR,

vs.

GRANT P. HALL, STATE TAX COMMISSIONER OF WEST VIRGINIA, AND HOWARD B. LEE, ATTORNEY GENERAL OF WEST VIRGINIA

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA

FILED JANUARY 6, 1927

(32,382)

Sec 6- Provides for returns by tax payer.

Sec 7. If error stat tax commr may reassess.

Sec. 8. Investigation of facts bearing on value.

Sect. 10, Tax payer has right of appeal to Inspectors

(32,382)

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[fol. 1]

IN SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 5735

HOPE NATURAL GAS COMPANY, a Corporation, Plaintiff Below, Appellee,

vs.

GRANT P. HALL, State Tax Commissioner of West Virginia, and Howard B. Lee, Attorney General of West Virginia, Defendants Below, Appellants

Part 1

ORDER ALLOWING APPEAL—June 3, 1926

This day came Grant P. Hall, State Tax Commissioner of the State of West Virginia, and Howard B. Lee, Attorney General of the State of West Virginia, by Howard B. Lee, R. Dennis Steed, R. A. Blessing, John T. Simms, T. C. Townsend and Fred O. Blue, their attorneys, and presented to the Court a petition praying for an appeal from and supersedeas to a decree of the Circuit Court of Kanawha County pronounced on the 25th day of May, 1926, in a cause in which the Hope Natural Gas Company, a corporation, [fol. 2] was plaintiff, and said petitioners were defendants, with a record of the decree aforesaid accompanying the petition, which being seen and inspected by the Court, the appeal and supersedeas prayed for is allowed, but the same is not to take effect until petitioners, one of them, or some person or persons for them, shall have given, before the clerk of the Circuit Court of Kanawha County, bond with good personal security in the penalty of Five Hundred Dollars ($500.00), conditioned according to law; and this cause is set down for hearing on the first day of September, 1926, on the original record, without being printed.

In Supreme Court of Appeals of West Virginia

Petition for Appeal and for Supersedeas

To the Honorables the Judges of the Supreme Court of Appeals of West Virginia:

Your Petitioners, Grant P. Hall, State Tax Commissioner of the State of West Virginia, and Howard B. Lee, Attorney General of said State, respectfully represent:

That they are defendants in the chancery suit lately pending in the Court of Common Pleas of Kanawha County, West Virginia, wherein the Hope Natural Gas Company, a corporation, is plaintiff, and wherein the validity of an Act of the Legislature of West Virginia, Chapter One (Senate Bill No. 1), enacted at an extraordinary session of said legislature in the year 1925, was in question. The said Court of Common Pleas of Kanawha County, by a final decree entered in said chancery cause on the 10th day of [fol. 3] May, 1926, found and decreed that said Act, as to section 2-a thereof, in so far as it purports to impose a tax on the business of mining and producing natural gas for sale, profit or use, is in every respect null and void as to the said plaintiff, its property, franchises and business, and by said decree perpetually inhibited, enjoined and restrained petitioners from enforcing, or attempting to enforce in any manner the said Act, or any of the provisions thereof as to the natural gas mined and produced by the plaintiff within the State of West Virginia and from assessing and collecting the tax due to said state under said Act, for the privilege of engaging in the business of mining and producing natural gas therein for sale, profit or use.

Your petitioners, on the 25th day of May, 1926, presented to the Circuit Court of said Kanawha County their petition, assigning grounds of error upon and praying for an appeal from said final decree of the Court of Common Pleas of Kanawha County, entered on the 10th day of May, 1926, and with said petition presented to said Circuit Court of Kanawha County all of the original papers in said cause, including the printed stipulation of facts entered into between the parties thereto, and the exhibits with said stipulation, read and considered by said Court of Common Pleas,

together with the original orders and decrees endorsed for entry by the judge of said Court of Common Pleas and duly entered on and recorded in the proper chancery record book of said Court of Common Pleas. The said Circuit Court of Kanawha County having considered said petition [fol. 4] and all of the original papers above referred to, printed stipulation and exhibits therewith, said original orders and decrees, found and decreed that the said decree entered by said Court of Common Pleas on the 10th day of May, 1926, is plainly right, and on such ground and for such reason accordingly adjudged, ordered and decreed that said final decree of said Court of Common Pleas is plainly right and further adjudged, ordered and decreed that the appeal prayed for be rejected and refused, and accordingly rejected and refused the appeal prayed for.

Your petitioners present herewith all of the original papers in said cause, including the printed stipulation of facts entered into between the parties thereto and the exhibits therewith, together with the original orders and decrees endorsed for entry by the judge of the Court of Common Pleas and duly entered on and recorded in the proper chancery record book of said Court of Common Pleas, and, further, the original petition presented to said Circuit Court of Kanawha County and the original decree rejecting and refusing an appeal duly entered on and recorded in the proper chancery book of said Circuit Court of Kanawha County on the 25th day of May, 1926.

Your petitioners further represent that they are aggrieved by said final decree of said Court of Common Pleas of Kanawha County, entered on the 10th day of May, 1926, and the decree of said Circuit Court of Kanawha County entered on the 25th day of May, 1926, rejecting and refusing your petitioners the appeal prayed for, and that said [fol. 5] decrees are to the prejudice of your petitioners. In the petition to said Circuit Court of Kanawha County your petitioners assigned the following errors in said final decree of the Court of Common Pleas of Kanawha County, errors to their prejudice, (which assignments of error are now here adopted and made a part hereof) namely:

First. The court below erred in finding and decreeing that the Act of the Legislature of West Virginia, Chapter

One (Senate Bill No. 1), enacted at an extraordinary session of said Legislature in the year 1925, particularly mentioned in the pleadings, papers and record in said cause, as to Section 2-a of said Act, in so far as it purports to impose a tax on the business of mining and producing for sale, profit or use natural gas, is in every respect null and void as to the plaintiff, its property, franchises and business, and that so much of said Section 2-a as applies to the business of mining and producing natural gas is not divisible or severable.

Second. The court below erred in perpetually inhibiting, enjoining and restraining the defendants from enforcing, or attempting to enforce in any manner the said Act, or any of the provisions thereof as to the natural gas mined and produced by the plaintiff within the state of West Virginia, and from assessing and collecting, or in proceeding to collect from plaintiff the tax due to the state of West Virginia under said Act, for the privilege of engaging in the business of mining and producing natural gas therein for sale, profit or use.

[fol. 6] Third. The court below erred in finding and decreeing that the plaintiff is not subject to a public service company tax under Section 2-d of said Act as to the natural gas produced by it in the State of West Virginia inasmuch as the gas produced by the plaintiff in said state, under the court's finding and decree, is not included in the measure of any tax under Section 2-a.

Fourth. The court below erred in overruling the motion of the defendants to deny the plaintiff an injunction, so far as the court granted the same, because the plaintiff had not paid, or tendered to pay the amount of any tax, or taxes, due from it under Section 2-d of said Act: And, further, because the court overruled the defendants' motion to make the awarding of an injunction to the plaintiff, conditioned upon the payment of taxes due under Section 2-d.

Fifth. And for these and other errors apparent upon the face of the record, or which may hereafter be assigned.

Your petitioners, therefore, pray for an appeal from the decrees complained of.

Grant P. Hall, State Tax Commissioner of West Virginia; Howard B. Lee, Attorney General of West Virginia, by Their Counsel. Howard B. Lee, Attorney General. R. Dennis Steed, Assistant Attorney General. R. A. Blessing, Assistant At-
[fol. 7] torney General. John T. Simms, Counsel for State Tax Commissioner. T. C. Townsend, Fred O. Blue, of Counsel for Petitioners.

We, T. C. Townsend and Fred O. Blue, attorneys practicing in the Supreme Court of Appeals of West Virginia, do certify that in our opinion there is error in the decrees complained of above and that the same should be reviewed by this court and upon hearing, reversed.

Given under our hands this 26th day of May, 1926.

T. C. Townsend, Fred O. Blue.

[fol. 8] In Supreme Court of Appeals of West Virginia

Appeal and Supersedeas and Sheriff's Return—Filed June 30, 1926

State of West Virginia to the Sheriff of Kanawha County, Greeting:

We command you that from all further proceedings on a decree rendered by the Circuit Court of Kanawha County on the 25th day of May, 1926, in a cause — which Hope Natural Gas Company, a corporation, was plaintiff and Grant P. Hall, State Tax Commissioner, and Howard B. Lee, Attorney General of the State of West Virginia, were Defendants, you altogether supersede; which decree before the Judges of our Supreme Court of Appeals at the place provided by law, for cause of error in the same to be corrected on the petition of the said Grant P. Hall, State Tax Commissioner and Howard B. Lee, Attorney General of West Virginia, we have caused to come: —— ——. We also command you that you give notice to the said Hope Natural Gas Company, a corporation, that it be before the

Judges of our said Supreme Court of Appeals at the place provided by law, on the first Monday in July next, then and there to have a re-hearing of the whole matter in the Decree aforesaid contained: And have then there this writ.

Witness Wm. B. Mathews, Clerk of our said Supreme Court of Appeals, the 3rd day of June, 1926, and in the 63rd year of the State.

Wm. B. Mathews, Clerk.

Memo.—This writ is not to take effect until the petitioner or some other person shall execute before the Clerk of the Circuit Court of Kanawha County, bond with good personal security, in the penalty of five hundred dollars ($500.00), conditioned as the law directs.

Teste:

Wm. B. Mathews, Clerk.

I, M. J. Rathbone, Attorney in fact for Hope Natural Gas Company appointed pursuant to law for the purpose of accepting service of process against said corporation, hereby accept service of the within process, in the County of Wood, State of West Virginia, which County of Wood is the County wherein I reside.

This the 29 day of June, 1926.

M. J. Rathbone, Attorney in Fact for Hope Natural Gas Company.

[File endorsement omitted.]

Circuit Clerk's Certificate

Bond in penalty of five hundred dollars, conditioned as the law directs, was executed before me on behalf of the petitioner in the within cause on the 25 day of June, 1926, with J. L. Wolfe, of Charleston, and R. Dennis Steed, of Charleston, as sureties.

Teste:

W. L. Price, Clerk of the Circuit Court of Kanawha County.

NOTE.—The attention of parties is invited to clause 4 Rule IV of the Supreme Court of Appeals which is as follows:

"No case in which an appeal or supersedeas bond is required shall be placed upon the argument docket until the Clerk shall have received a duly attested copy of such bond." See Code, chap. 135, sec. 14.

The officer or other person executing this writ, will please return the same to the Clerk of the Supreme Court of Appeals at Charleston, on or before the return day named in the writ. Service may be legally had upon the attorney or attorneys who represented the parties now to be summoned, while the cause was pending in the Circuit Court. See Code, Chap. 135, sec. 13.

[fols. 9-12] Bond on Appeal for $500.00, approved and filed June 26, 1926, omitted in printing.

[fol. 13] Summons, in usual form, showing service on Howard B. Lee, omitted in printing.

[fol. 14] IN COURT OF COMMON PLEAS OF KANAWHA COUNTY

NOTICE OF MOTION FOR TEMPORARY INJUNCTION

To Grant P. Hall, State Tax Commissioner of the State of West Virginia, and Howard B. Lee, Attorney General of the State of West Virginia:

You and each of you are hereby notified that on Wednesday, the 28th day of October, 1925, at ten o'clock in the forenoon, or as soon thereafter as counsel may be heard, the undersigned Hope Natural Gas Company, a corporation, will present to the Judge of the Court of Common Pleas of said Kanawha County, West Virginia, then sitting at the Court House thereof, its bill of complaint in the above styled cause, duly verified and with accompanying exhibits, a copy of which bill is attached hereto as part of this notice,

and will thereupon move the said Court to award a temporary injunction in the said cause, enjoining, restraining and inhibiting said Grant P. Hall, State Tax Commissioner as aforesaid, and all persons acting under his authority or direction, from enforcing or attempting to enforce in any manner against the undersigned plaintiff that certain Act, or any part thereof, designated as Chapter 1 of the Acts of the Legislature of West Virginia of the Extraordinary Session of 1925, entitled "An Act to provide for the raising of additional public revenue by a tax upon the privilege of engaging in certain occupations; to provide for the ascertainment, assessment and collection of such tax; to provide penalties for violations of the terms hereof; and to repeal [fol. 15] certain statutes"; and also from requiring it to make any return or report to said Tax Commissioner under the said Act, and from assessing upon its property, or against it, any tax thereunder, and from collecting, or proceeding to collect from it, in any way, any such tax or penalty or fine prescribed by said Act, and from instituting any prosecutions thereunder; and enjoining, restraining and inhibiting the said Howard B. Lee, Attorney General as aforesaid, and all persons acting under his authority, advice or direction, from enforcing or attempting to enforce any and every part of said Act against said plaintiff, and from proceeding to have the plaintiff, its property, agents or employees held liable for any tax, penalty or any fine imposed, and from instituting any prosecutions thereunder.

And at the time and place aforesaid you and each of you may be present and do what is proper to protect your interests, if you be so advised.

Hope Natural Gas Company, by Counsel. H. D. Rummel, Charles Powell, Kemble White, Anthony McCue, S. E. W. Burnside, Edward M. Borger, Arthur E. Young, Counsel for Plaintiff.

[fol. 16] (Endorsed on bottom:)

Legal service of the above and within notice accepted for and on behalf of Grant P. Hall, State Tax Commissioner, of the State of West Virginia, and Howard B. Lee, Attorney General of the State of West Virginia, this the 23rd day of October, 1925.

H. B. Lee, Attorney General of the State of West Virginia.

In Court of Comm :: Pleas of Kanawha County

Order Filing Bill of Complaint

This day the plaintiff, by counsel, tendered and asked leave to file its bill of complaint in the above styled cause, duly verified, and with accompanying exhibits, which being seen and inspected by the Court, are now ordered to be filed. And it is further ordered that said cause be remanded to Rules for process against the defendants.

(Endorsed:) Enter: Morgan Owen, Judge. Entered in Chancery Order Book Oct. 23, 1925. No. 6, Page 79.

[fol. 17] [File endorsement omitted]

[fol. 18] In Court of Common Pleas of Kanawha County

In Chancery

Hope Natural Gas Company, a Corporation, Plaintiff,

vs.

Grant P. Hall, State Tax Commissioner of the State of West Virginia, and Howard B. Lee, Attorney General of the State of West Virginia, Defendant

Bill of Complaint—Filed October 23, 1923

To the Honorable the Judge of said Court:

The bill of complaint of Hope Natural Gas Company, a corporation, plaintiff, exhibited against Grant P. Hall, State Tax Commissioner of the State of West Virginia, and Howard B. Lee, Attorney General of the State of West Virgrinia, defendants, in said Court.

Hope Natural Gas Company, plaintiff, complains and says:

First. Hope Natural Gas Company is a corporation organized and existing under the laws of the State of West [fol. 19] Virginia and has its principal office and place of business in the State of West Virginia at Clarksburg,

Harrison County. Its chief business is now, and always has been, the production and purchase in West Virginia of natural gas and transportation by means of pipe lines from the places of production and purchase of the major portion of such gas through, across and out of the state for sale and delivery in interstate commerce to other companies for further, continuous and uninterrupted transportation into the Commonwealth of Pennsylvania, and the State of Ohio, for consumption and use in the cities and towns and other communities of those states. The remainder of such gas, a very much smaller portion, so produced and purchased in West Virginia, some of it after being transported through portions of the same system of pipe lines, is all distributed and sold to consumers in West Virginia or used by the company in its own operations.

Second. The defendant, Grant P. Hall, is the duly appointed and qualified State Tax Commissioner of the State of West Virginia, is a citizen of said State, and resides, and has his office at Charleston, Kanawha County, West Virginia. It is his duty, as State Tax Commissioner, to administer and faithfully enforce all the tax laws of the State, and all laws concerning the assessment, levy and collection of taxes, and he is expressly given full power and authority, and it is made his duty, to ascertain and assess the tax imposed by, and to faithfully enforce and administer, an Act of the Legislature of West Virginia, Chapter 1 (Senate Bill No. 1), enacted at an Extraordinary [fol. 20] Session of said Legislature, in the year 1925, and to prescribe forms for returns and assessments thereunder, and to adopt and promulgate all necessary and needful rules and regulations for ascertaining and assessing the tax thereby imposed; and the said Act makes it his duty to proceed to collect such tax so assessed thereunder, with the penalties in said Act imposed, and to issue to the company paying the same a certificate of payment.

Third. The Defendant, Howard B. Lee, is the duly elected and qualified Attorney General of the State of West Virginia, is a citizen of said State and has his office at the capital of said State, at Charleston, Kanawha County, West Virginia. It is his duty as Attorney General to give his opinion and advice to said State Tax Commissioner, and to

aid and assist him in faithfully enforcing all the tax laws, to represent the State in any cause in which the State is interested, and to institute, conduct and maintain all suits and proceedings for the protection of the public rights and the enforcement of the laws of the State, and especially, all tax laws and those statutes which prescribe fines and penalties, including Chapter 1 enacted, as aforesaid, at an Extraordinary Session of said Legislature in the year 1925.

Fourth. Chapter 1 (Senate Bill No. 1) of the Acts of the Legislature of West Virginia of the Extraordinary Session, 1925, is entitled:

"An Act to provide for the raising of additional public revenue by a tax upon the privilege of engaging in certain occupations; to provide for the ascertainment, assessment [fol. 21] and collection of such tax; to provide penalties for violations of the terms hereof; and to repeal certain statutes."

Particular reference is made to said Act for all of its terms and for its legal effect, and it will be referred to as "Tax" Act.

Fifth. The defendant, the State Tax Commissioner, acting under the authority of said Tax Act, has prescribed forms for returns and assessments thereunder, and has promulgated and attempted to put in force, certain rules and regulations deemed necessary by him to ascertain and assess the said Business-Profession taxes, a printed copy of which rules and regulations, with a complete copy of said Tax Act indorsed thereon designated as "Plaintiff's Exhibit No. 1, Copy of Tax Act and of Rules and Regulations," and printed copies of said forms for making returns designated as Plaintiff's Exhibit No. 2 "Quarterly Return," and Plaintiff's Exhibit No. 3 "Annual Return," are all hereto attached or will be filed herewith and are made a part hereof.

Sixth. The State Tax Commissioner, in and by his said forms and rules and regulations, so adopted and promulgated, has declared that said Act imposes a tax for the particular privilege of mining or producing, including transportation and selling when transported and sold by

the producer, minerals (including natural gas and oil) and lumber mined and produced within the State of West Virginia, and transported and sold by the producers either for consumption or use within the state or in commerce be- [fol. 22] tween West Virginia and other States of the United States for the use and consumption in such other States; and in and by his said forms and rules and regulations the Tax Commissioner has declared that said Act also imposes a tax for the particular privilege of selling natural gas and oil for delivery and use or consumption outside the state, in commerce between West Virginia and Pennsylvania and Ohio and other States of the United States.

Seventh. The Tax Commissioner notified plaintiff that it is subject to the taxes imposed by said Tax Act applicable to any and all of the business of plaintiff company transacted in the State of West Virginia and that it must comply with all the terms thereof and with the rules and regulations adopted and promulgated by him and make return under oath in accordance with such rules and regulations on or before October 30th, 1925, in writing upon the forms so prepared for making return on account of all business engaged in during the quarter commencing July 1st, 1925, and the Tax Commissioner has furnished plaintiff with blank forms for making such return and has demanded, and is demanding, that plaintiff fill out and complete such returns, sign and swear to the same and file them with him, and remit to him the amount shown to be due; and the Tax Commissioner intends promptly, upon the filing of such returns, and if plaintiff fails to compute and remit the taxes appearing to be due, to ascertain and assess against plaintiff, in respect to all business transacted by it, the taxes imposed under said Act, and after thus ascertaining and assessing such taxes said Commis- [fol. 23] sioner, if the taxes are not paid, intends to collect the amount thereof, including a penalty of 5% and the costs of collection and further additional penalties of 2% of the amount of tax for each succeeding 30 days elapsing before payment, as provided in Section 11 of said Act.

Eighth. The plaintiff has not filed and will not file such returns nor make any return under said Tax Act and the Tax Commissioner, pursuant to his apparent duty and

in accordance with its express terms, intends and proposes to enforce the said Act against plaintiff; and plaintiff company having failed to make return, to proceed to obtain the facts and information required to be furnished by such return, and thereupon to ascertain and assess the tax upon plaintiff as authorized and required to do by Section 8 of said Act, and the Tax Commissioner's act in so making return and assessing the taxes against plaintiff, if it refuses to make return, is by said Act made final, and the Tax Commissioner will, as authorized and required to do by Section 11, proceed to collect the same with the 5% penalty and cost of collection and with said additional penalties of 2% for each 30 days elapsing before payment, by appropriate judicial proceeding; and will proceed to have plaintiff convicted of a misdemeanor for not making return and fined as provided in Section 15 of said Tax Act; and it is the intention and purpose of the defendant, Howard B. Lee, Attorney General of said State, and it is by law made his duty to represent and assist said Tax Commissioner in all judicial proceedings instituted for the enforce-[fol. 24] ment of said Tax Act against plaintiff and the collection of said taxes and penalties, and in procuring plaintiff's conviction of such misdemeanor and in seeing that the fine is imposed.

Ninth. Plaintiff has refused to make return and to pay said taxes because it is informed and believes that said Tax Act is, for the reasons and on the grounds hereinafter shown, unconstitutional, illegal, invalid and void, and manifestly so in the case of this plaintiff, because of the character of its business, which is as follows:

Tenth. Commencing about the year 1891, in drilling for petroleum in West Virginia, large quantities of natural gas were discovered, and within a few years the volume of this gas had become so tremendous that it hampered operations for oil and threatened to result in its absolute loss, because of no adequate and ready market for such gas. To meet this emergency, and to save one of nature's most useful products, steps were taken to find, if possible, a ready and immediate market. Natural gas was at the time being used for lighting and heating in the more densely populated areas of northeastern Ohio and the bene-

ficial owners of certain of the oil companies conducting such oil operations in West Virginia on a large scale, decided that, if the gas could be transported to these areas in Ohio, where the consumers already knew the advantages and convenience of its use, a ready and large market would be, at once, obtained.

Accordingly, the beneficial owners of the larger companies which had discovered, and were, necessarily, pro- [fol. 25] ducing and unavoidably wasting much of this gas in their search and operations for petroleum in West Virginia, organized the plaintiff, Hope Natural Gas Company, solely to purchase gas, gas wells and gas territory, and to produce gas and transport it from the places of production to the State line between West Virginia and Ohio, all in interstate commerce; and also, at the same time, organized The East Ohio Gas Company under the laws of the State of Ohio, to receive the gas at the state line and transport it within the State of Ohio and deliver it to the consumers in the areas of northeastern Ohio before mentioned, including cities of Massillon, Canal Dover, Dennison, Canton and Akron.

Pursuant to this plan, the plaintiff, Hope Natural Gas Company, was incorporated under the laws of the State of West Virginia, September 17th, 1898, and plaintiff's original charter recites specifically, the purpose for which it was incorporated as the purpose, "of producing, purchasing and acquiring natural gas in West Virginia and of piping and transporting the same from the place or places where the same is produced, purchased or acquired, to a point on the Ohio River on the boundary line between the States of Ohio and West Virginia, and there deliver said gas to another company, or companies, person or persons, in continuous and uninterrupted transit in interstate commerce in the State of Ohio for consumption therein, and with the right to lay and maintain lines of pipe, and to acquire and hold such lands and leaseholds for oil and gas purposes, and such other real and personal property as may be necessary for said purposes."

[fol. 26] By amendments, in the form of New-Agreements between the stockholders dated February 1, 1904, and September 11, 1916, the above stated purpose was enlarged

to enable plaintiff to likewise produce, purchase and transport gas by pipe lines to the State line between West Virginia and Pennsylvania, to be there received and further transported in continuous and uninterrupted transit in Pennsylvania by other companies, and distributed to their customers and consumers in said state; and such purchases, production and transportation of natural gas by means of pipe lines to, and across, the State lines into Ohio and Pennsylvania, to be there received and further transported in continuous and uninterrupted transit, and distributed to customers and consumers in those states, has always been, and is now, the main purpose and chief business of plaintiff company. A true and certified copy of plaintiff's Original Charter and said New-Agreements in amendment thereof, are hereto attached or will be filed herewith and are made a part hereof, marked "Plaintiff's Exhibit No. 4—Charter and Amendments."

Eleventh. Following its incorporation, the plaintiff, Hope Natural Gas Company, purchased a large number of gas wells and leaseholds for gas, in Marshall and Wetzel Counties, West Virginia, and constructed pipe lines from these wells to, and across the Ohio River, about four miles below Moundsville, into the State of Ohio, and there made connection at the State line with a similar line, constructed by The East Ohio Gas Company, extending down from the cities and towns mentioned in northeastern Ohio, to [fol. 27] said point of connection for the purpose of there receiving said gas and transporting it in continuous and uninterrupted transit to its customers and consumers in said cities and towns, and other localities in the State of Ohio. With the completion of said trunk lines by plaintiff and The East Ohio Gas Company, so connecting plaintiff's wells in Marshall and Wetzel Counties, West Virginia, with the lines of the customers and consumers of The East Ohio Gas Company in said towns and cities in Ohio, plaintiff at once began to produce and purchase natural gas and transport the same through its pipe lines in West Virginia and through said trunk lines across the Ohio River to the Ohio-West Virginia State line, there delivering the gas to The East Ohio Gas Company, which continued without interruption the transportation of the

gas in Ohio through its trunk lines and distributing lines to its consumers and customers in the places mentioned, and in other places in Ohio. This gas was not measured in transit, but its quantity was determined by the meter measurements showing the gas delivered by The East Ohio Gas Company to its consumers and customers, and a percentage of the earnings or proceeds of the gas so sold was paid by The East Ohio Gas Company to plaintiff Company. About 1902 The East Ohio Gas Company extended its lines to the City of Cleveland, Ohio, and to other large cities and towns in said state, and, in order to furnish a further supply of gas for these cities and towns, plaintiff leased and purchased other gas wells and leases of gas territory in other counties in the State of West Virginia.

[fol. 28] Twelfth. About the year 1903, the quantity of natural gas discovered and produced having greatly increased, the same beneficial owners who had caused the incorporation of plaintiff company and The East Ohio Gas Company, purchased The Peoples Natural Gas Company, a corporation of the State of Pennsylvania, which was engaged in the business of producing natural gas in Pennsylvania, and in marketing the same in the City of Pittsburgh, Pennsylvania, and vicinity, and which, owing to the decline in the production of natural gas in Pennsylvania, was without a sufficient supply of gas for its customers and consumers. Immediately following the purchase of The Peoples Natural Gas Company, as aforesaid, The Peoples Natural Gas Company constructed a 20″ pipe line from Pittsburgh, Allegheny County, Pennsylvania, to Brave, Greene County, Pennsylvania, at the State line between Pennsylvania and West Virginia, and to this point, plaintiff company in turn constructed a trunk line connecting with its wells and other lines in West Virginia and connecting with said 20″ line of The Peoples Natural Gas Company. By means of these trunk lines, in part constructed by plaintiff company and in part by The Peoples Natural Gas Company, plaintiff at once began to transport and deliver gas from its wells in West Virginia to The Peoples Natural Gas Company at Brave, Pennsylvania, which received the gas at the State line between West Virginia and Pennsylvania near Brave and transported, sold and de-

livered the gas to its consumers and customers in Pittsburgh and vicinity in the State of Pennsylvania.

[fol. 29] Thirteenth. In the year 1910, plaintiff purchased the gas wells, gas leaseholds and gas lines of the Fayette County Gas Company, located and being in West Virginia, and made a contract with that company under which plaintiff has since been delivering gas to it at a point on the State line between West Virginia and Pennsylvania near Wade, Pennsylvania, which gas is there received by the Fayette County Gas Company and further transported in continuous and uninterrupted transit in Pennsylvania and delivered and distributed to the customers and consumers of the Fayette County Gas Company in the cities of Uniontown, Connellsville, and other cities and towns within the the State of Pennsylvania.

Fourteenth. Also, in the year 1910, plaintiff company purchased from the Manufacturers Light & Heat Company, and companies controlled or affiliated with it, certain gas wells, leases of gas territory gas contracts and gas lines, all located in the State of West Virginia, and entered into a contract with the Manufacturers Light & Heat Company under which the plaintiff company has since, and still is delivering gas to that company at certain points in West Virginia, which gas is by it transported in continuous and uninterrupted transit, and in very large quantities, out of West Virginia into Ohio and Pennsylvania, and there delivered to the customers and consumers in those states of the Manufacturers Light & Heat Company.

Fifteenth. Also in the year 1910, plaintiff, by purchasing the Mountain State Gas Company, assumed a contract to, [fol. 30] and has since, delivered large quantities of gas across the Ohio River into the State of Ohio to The River Gas Company, a corporation which, in turn, is receiving this gas at the Ohio State line and transporting it in continuous and uninterrupted transit in the State of Ohio, and there delivers the same to customers and consumers in the City of Marietta, and other towns and villages in its vicinity, all in the State of Ohio.

Sixteenth. The foregoing is a general statement of the causes leading to the incorporation of plaintiff company and of the purpose of its incorporation, and shows that plaintiff's chief business has always been, and is now, the purchase and production of natural gas and transportation of the same from the places of its production in West Virginia, by means of pipe lines, in continuous and uninterrupted transit into the States of Ohio and Pennsylvania, in interstate commerce for further transportation and distribution to consumers for consumption in those states, and without interruption or break in the movement of the gas from the time it leaves the wells in West Virginia, until it is delivered for consumption in the States of Pennsylvania and Ohio. And it is true that plaintiff company has been for many years, and is now, obligated by contracts in writing, which still have many years to run, and which fix the quantities and price and other terms of sale of the gas, to purchase and produce natural gas in West Virginia and to so transport and deliver the same by pipe lines into the States of Ohio and Pennsylvania in the manner described. [fol. 31] These contracts have been entered into with the companies above mentioned which receive the gas so transported as it passes out of the State of West Virginia, or themselves transport the gas received at points in the State of West Virginia from plaintiff, without interruption or break in its transit to the state line, and then on into the States of Ohio and Pennsylvania, where it is delivered and distributed for consumption to consumers and customers in those states. And by virtue of these contracts, and pursuant to the purpose of its incorporation, plaintiff is bound to produce and transport natural gas to the state lines of West Virginia and into Ohio and Pennsylvania in interstate commerce, so long as gas can be produced in sufficient quantities in the State of West Virginia according to the terms of some of these contracts, and for many years to come, according to the terms of others. And said gas-purchase contracts herein-above mentioned entered into by plaintiff with the above named companies, The East Ohio Gas Co., The Peoples Natural Gas Co., Fayette County Gas Co., The River Gas Co., and Manufacturers Light and Heat Co., are made a part hereof and true copies will be filed.

Seventeenth. It is also true that prior to 1910, plaintiff company produced, or purchased and transported, but very small quantities of natural gas for consumption or use within the State of West Virginia. However, beginning about 1910, and since, it has purchased the properties of several small local companies with their distributing systems supplying gas to customers and consumers within the [fol. 32] State of West Virginia, and as an incident to its chief business of transporting gas in interstate commerce, has engaged, and is now engaged to this extent, in the public service of supplying natural gas to consumers within the State of West Virginia. And the Statute Law of West Virginia declares plaintiff company to be a public service company engaged in the natural gas business.

Eighteenth. Plaintiff, as incident to its business of producing natural gas, drills wells producing crude oil or petroleum in paying quantities but has never been and is not now, engaged in the business of producing or transporting, by pipe line or otherwise, crude oil or petroleum, nor is it now or has it ever been engaged in the business of selling the same within the state of West Virginia, and any crude oil or petroleum produced from wells drilled incident to its business of producing natural gas, is sold under agreement and has been for several years, to the Standard Oil Company (N. J.) and delivered to said company at Bayway, New Jersey, and all such crude oil and petroleum, at the time of its discovery and production is delivered and is required, under said agreement, to be delivered, by means of pipe lines, from the places of production in West Virginia, to the said Standard Oil Company (N. J.) at Bayway, State of New Jersey. The quantity of oil so sold and delivered by plaintiff company to said Standard Oil Company at Bayway, New Jersey, during the year ending June 30, 1925, was 1,000 barrels.

Nineteenth. Plaintiff company, in carrying out the purpose of its incorporation, has drilled and acquired many [fol. 33] gas wells and much gas territory, the gas territory being owned, in some instances, in fee, but for the most part, being held under the usual form of oil and gas lease, and consisting of what are commonly known as leases for oil and gas purposes. It now has some 3,178 gas wells, and

305,705 acres of developed territory, that is, leases on which one or more gas wells have been drilled, and 555,035 acres of undeveloped gas territory, consisting of leases on which no gas wells have been drilled, located in some nineteen counties in the State of West Virginia.

The gas from these wells does not flow into any particular pipe line, but is gathered by what are known as field gathering lines, which discharge into other lines, which conduct the gas through field compressor stations, at which the gas is compressed and its natural pressure augmented, and the gas is then discharged into main lines which may conduct it through still other compressor stations at which the process of compression is repeated, and the gas is finally discharged under sufficient pressure to force it through the pipe line to the places of distribution and consumption. A schedule is hereto attached or will be filed and made a part hereof, in which is given a statement of data relating to the gas wells and sources of gas supply, gas territory, chief gas lines and compressor stations of plaintiff company as of December 31, 1924, including a map showing the trunk lines and other main lines of the pipe line system of plaintiff, Hope Natural Gas Company, and the trunk lines of the pipe line systems connecting with the lines of the Hope Natural Gas Company in West Virginia, and at the state [fol. 34] lines between West Virginia and the States of Pennsylvania and Ohio, marked "Plaintiff's Exhibit No. 5—Schedule of Wells, Gas Territory, Compressors and Pipe-lines," and "Plaintiff's Exhibit No. 6—Map showing the Pipeline Systems."

Twentieth. Since entering into said agreements with the said East Ohio Gas Company, The Fayette County Gas Company, The Peoples Natural Gas Company, The River Gas Company and the Manufacturers Light & Heat Company, plaintiff company, pursuant to the requirements of and in fulfillment of its obligations thereunder, has been operating its wells and drilling new gas wells in order to supply said purchasing companies with the quantities of gas agreed to be delivered to them respectively, from year to year, and which it has agreed to transport from the places of production and purchase, through, across and out of the State of West Virginia, and deliver to said re-

spective companies, at the state lines, between the State of West Virginia and the State of Ohio, and the State of West Virginia and the Commonwealth of Pennsylvania, and at other points as hereinabove shown; and it has maintained and will be compelled to maintain in the future, in order to perform its obligations under said gas purchase agreements, continuous streams of gas with their sources in the gas producing formations at the bottoms of the wells from which the gas is obtained, flowing from the wells through gathering lines, connected to the wells, into larger trunk lines which carry the gas through and across the State of West Virginia in continuous flow and without in- [fol. 35] terruption to the places of consumption and use in the State of Ohio and the Commonwealth of Pennsylvania, and while it is true that the power or energy which forces the gas up the wells and out of the producing formations, is its natural pressure, or pressure under which it is stored in such formations, commonly called "rock" pressure, and that this natural or "rock" pressure is sometimes sufficient not only to force the gas up and out of the wells, but long distances through the gathering lines and trunk lines, it is also true that in many instances, especially in the case of old wells, the gas in the strata cannot be made available for use excepting by means of pumping to accelerate the flow, and such pumping or compression is used to increase the quantity of gas flowing therefrom, and it is also true that where the gas is delivered for use and consumption out of the State of West Virginia, the natural pressure of the gas is necessarily supplemented by artificial pressure supplied at pumping or compressor stations located at intervals along said pipe lines, so constructed and connected with said pipe lines and so operated as not to interrupt the flow of the gas, but to receive the gas under its diminished and diminishing "rock" pressure, and to compress it to a higher pressure thus causing the gas to continue in its flow from its sources continuously to the points of delivery and places of consumption in the State of Ohio and the Commonwealth of Pennsylvania; and the quantities of gas so delivered by plaintiff company, are limited, of course, first by plaintiff's available supply, and secondly by the quantities of gas required by said gas purchase agreements to be delivered to the above named purchasing

companies, annually, and, from month to month and day [fol. 36] to day, and finally by the rate at which the gas is, in fact, consumed or taken by the consumers and purchasers at the points of delivery and consumption.

Twenty-first. Since its incorporation on September 17th, 1898, up to December 31st, 1924, plaintiff company had produced and purchased in the State of West Virginia, and transported and delivered, by means of pipe lines, at the state lines into Ohio and Pennsylvania, or had transported and delivered to other companies to so transport to the state lines, in accordance with its arrangements and contracts with the companies operating in those states, and receiving the gas for further transportation and distribution, use and consumption in those states—in the case of The East Ohio Gas Company 580,795,664,000 cubic feet of gas; in the case of The Peoples Natural Gas Company, 269,674,322,000 cubic feet; in the case of the Fayette County Gas Company 24,136,246,000 cubic feet of gas; in the case of The River Gas Company, 16,929,009,000 cubic feet of gas; and in the case of the Manufacturers Light & Heat Company, 165,398,872,000 cubic feet of gas; all of which gas was transported in interstate commerce without the State of West Virginia, except that about 25% of the gas so delivered to the Manufacturers Light & Heat Company, which was delivered and consumed within the State of West Virginia.

Twenty-second. Plaintiff's pipe line system in West Virginia, as shown, is an integral part of the net work of pipe lines connecting the gas producing fields of West Virginia [fol. 37] with the consumers of the gas, located principally in the States of Ohio and Pennsylvania. And plaintiff's pipe line system is a necessary part of this larger system, and if it should fail to deliver the gas produced and purchased in West Virginia, in accordance with its contracts with the companies receiving the gas at the state lines, and dstributing it to consumers in Ohio and Pennsylvania, the result would be ruinous to those companies.

For, The East Ohio Gas Company, The Peoples Natural Gas Company, Fayette County Gas Company, The River Gas Company and Manufacturers Light & Heat Company, of necessity, must depend, some of them almost entirely,

and all of them have in the past, and must in the future, depend entirely, or always for very substantial supplies of gas, and of necessity must do so, because of want of other available supplies, upon plaintiff company to supply them with gas for their respective consumers numbering in the case of The East Ohio Gas Company at present about 412,000 domestic consumers located in many cities, towns and localities in the State of Ohio, including Cleveland, Ravenna, Massilon, Canton, Akron, Dennison, Canal, Dover, Youngstown, Warren and Miles; numbering in the case of The Peoples Natural Gas Company at present about 100,000 domestic consumers located in Pittsburgh and other cities and towns and places in Western Pennsylvania; numbering in the case of Fayette County Gas Company about 15,000 domestic consumers located in Uniontown, Connellsville and other cities and towns in those vicinities in Pennsylvania; numbering in the case of The River Gas Company about 7,000 domestic consumers located in Marietta and [fol. 38] other towns and villages and places in that vicinity in the State of Ohio, and numbering in the case of the Manufacturers Light & Heat Company about 130,000 consumers located in various places, some few in West Virginia but mostly in Ohio and Pennsylvania, and during the year ending June 30th, 1925, plaintiff furnished and transported in interstate commerce, and sold and delivered in the manner stated, to these companies pursuant to its said purchase agreements with them, in excess of 43 billion cubic feet of natural gas.

Twenty-third. During the year ending June *June* 30th, 1925, plaintiff produced in the State of West Virginia, 23,194,711,000 cubic feet of natural gas and purchased 25,456,947,000 cubic feet of gas, all of which was produced in said State, and of this total amount of gas so purchased and produced approximating 48,650,658,000 cubic feet, 82 per cent., or more, was transported by means of plaintiff's pipe lines in continuous and uninterrupted transit from the places of its production and purchase to the state lines, and into the States of Ohio and Pennsylvania, and was so delivered in the amounts and to the companies as above shown. The above stated quantities of gas produced and purchased in West Virginia by plaintiff during the year ending June 30th, 1925, do not include gas produced and

supplied in West Virginia to its free-gas consumers in the amount of 491,516,000 cubic feet, and the plaintiff used in its own operations in West Virginia during said year 1,585,363,000 cubic feet of gas. And it is also true that these statements of quantities of gas are only approximately [fol. 39] correct for the year ending June 30th, 1925, because they are based upon readings of the meters of hundreds of thousands of consumers, which are usually read monthly, beginning about the 20th of each month, and the volume of gas given above for said year, is based partly upon the meter readings made in the latter part of June, 1925, and not on June 30th, 1925.

Twenty-fourth. This Tax Act purports on its face, to levy annual privilege taxes for the privilege of engaging in any business activity (with certain specific exceptions) within the State of West Virginia, and particularly insofar as it concerns or affects plaintiff's business, for the privilege of engaging or continuing in the business of mining and producing for sale, profit or use any natural gas or oil and provides that the tax shall be equal to the value of the natural gas or oil produced as shown by the gross proceeds derived from the sale thereof by the producer, multiplied, in the case of natural gas by 1-17/20 of 1%, and in the case of oil, by 1%, and states that the measure of the tax shall be the value of the entire production in the State of West Virginia, regardless of the place of sale or the fact that deliveries may be made to points outside the state before sale; and also, insofar as it concerns or affects plaintiff's business of purchasing natural gas and of transporting and selling such purchased gas, the Act imposes a privilege or occupation tax for the privilege of engaging or continuing in the business of selling such natural gas of 2/10 of 1% of the gross proceeds or gross income derived from such business; and these taxes, by section 13, are made ad- [fol. 40] ditional to all other licenses and taxes levied as a condition precedent to engaging or continuing in any business taxable thereunder. Plaintiff being a corporation organized and existing under the laws of the State of West Virginia and being under the state law a public service company, and engaged partly in the public service of supplying natural gas to consumers in West Virginia, has been required to pay annually, and will continue to be required

to pay on and after July 1st, 1925, the effective date of this Tax Act, the taxes imposed under the general taxing system of the State, as follows:

(a) The laws of the State require the assessment annually upon all property, real and personal and including plaintiff's above mentioned gas leaseholds and oil and gas leaseholds, situate in the state, at its true and actual value and the payment of an equal and uniform tax based upon such valuation, known as the General Property Tax. Plaintiff Company has paid such general property tax upon its property in West Virginia, consisting chiefly of lands, oil and gas leasehold estates, wells, pipe lines, compressor stations, easements and equipment, constituting its entire plant and property within the state, annually, and this tax for the year 1924 amounted to $595,594.09, and was based upon an assessed value of $34,968,926, and has been paid by plaintiff, and on its property for the year 1925 an assessed value of more than $37,000,000 has been placed and a like tax, but in a larger amount, will be assessed and will be required to be paid, and will be paid, for the calendar year 1925.

[fol. 41] (b) The laws of the state require plaintiff company to pay an annual franchise tax for the right to exist under the laws of the state and to do business as a corporation and act in a corporate capacity and this tax is based upon the company's authorized capital and plaintiff has paid the same annually since its incorporation and for the year 1924, the said tax so paid amounted to $7,912.80.

(c) The laws of the state also require plaintiff, as a public service corporation, to pay an annual fee toward the support and expense of the State Public Service Commission and plaintiff, commencing in 1913, has paid such fee annually, and in the year 1924 paid for this purpose to the state $6,300.00.

(d) Plaintiff has also paid, commencing July 1st, 1921, all privilege, occupation and sales taxes levied against it under Chapter 110 of the Acts of the Legislature of West Virginia of 1921, and during the calendar year 1924, the amount of said taxes paid by it was $36,255.62, and the

amount of said taxes levied and assessed and paid for the six months ending June 30, 1925, was $23,530.07.

None of the foregoing tax laws, under which the said taxes have been levied and assessed against plaintiff, and paid by it, have been amended or repealed and all remain in full force and effect, except Chapter 110 of the Acts of 1921, which act is repealed with proviso that it shall remain in full force and effect for the assessment and collection of all taxes and penalties which have accrued or may accrue in relation to any taxes levied thereunder up to and including June 30th, 1925.

[fol. 42] Twenty-fifth. Section 1 of the Tax Act defines "business" as used in the Act to include all activities engaged in, or, caused to be engaged in, with the object of gain, benefit, or advantage, either direct or indirect, not excepting sub-activities producing marketable commodities used or consumed in the main business activity, each of which sub-activities shall be considered business engaged in taxable in the class in which it falls, and defines "gross proceeds of sales" to mean the value proceeding or accruing from the sale of taxable property without any deduction on account of the cost of the property sold, expenses of any kind or losses.

Section 2 purports to levy and requires the collection from and after June 30th, 1925, of annual privilege taxes on account of all business activities (with the exceptions noted in Section 4), at the rates and as enumerated in Sections 2-a to 2-g.

Section 2-a imposes such annual privilege taxes for the privilege of engaging within the state in the business of mining and producing for sale, profit or use, any minerals or lumber, and provides that the amount of such taxes shall be equal to the value of the articles produced as shown by the gross proceeds derived from the sale thereof by the producer multiplied by certain percentages, the percentage specified in the case of natural gas being 1 17/20 of 1%, and in the case of oil or petroleum, 1%, and in the case of coal and other minerals at lesser rates, and states that the measure of the tax is the value of the entire production in the State of West Virginia, regardless of the place of sale or the fact that delveries may be made to points

outside of the state. Section 2-b provides that in case the [fol. 43] products mined or produced or any part thereof, are transported out of the state before sale, the value of the same in the condition or the form in which they existed when transported out of the state shall be the basis for the assessment of the tax imposed and that the Tax Commissioner shall prescribe equitable and uniform rules for ascertaining such value.

Section 2-b imposes an annual privilege tax for the privilege of engaging in the business of manufacturing, compounding and preparing for sale, any article, substance or commodity equal to 21/100 of 1% of the value of the articles manufactured, compounded or prepared for sale as shown by the gross proceeds derived from the sale thereof and also states that the measure of the tax is the value of the entire product manufactured, compounded or prepared for sale, profit or use in the state regardless of the place of sale or the fact that deliveries are made to points outside the state. And this Section also provides that if such product or any part of the same is transported by the manufacturer out of the state, without making sale of the same, the value of the product in the condition or form in which it exised when transported out of the state shall be the basis for the assessments of the tax imposed, and that the tax commissioner shall prescribe equitable and uniform rules for escertaining such value.

Section 2-c imposes an annual privilege tax for the privilege of engaging within the state in the business of selling any tangible property whatsoever, equivalent to 2/10 of 1% of the gross income of such business, with a proviso that the tax in the case of a wholesaler or jobber shall be [fol. 44] equal to 1/20 of 1% of his gross income.

Section 2-d imposes annual privilege taxes at rates specified, for the privilege of conducting their businesses, in the case of banks, steam railroads, street railroads, companies operating pipe lines carrying oil or gas, telephone, telegraph, express electric light and power companies and other public service companies or utilities, rate specified in the case of companies operating pipe lines carrying oil and gas being 1%, and in the case of public service companies or utilities, 2/5 of 1%, of the gross income of the respective businesses.

Section 2-e imposes an annual privilege tax for the privilege of conducting the business of contracting.

Section 2-f imposes an annual privilege tax for the privilege of operating a theater, opera house, etc.

Section 2-g imposes an annual privilege tax for the privilege of engaging within the state in any business not included in the preceding Sections equal to 3/10 of 1% of the gross income of any such business.

Section 2-g also provides that the Act shall not be construed so as to require the use of any gross income in the measure of the tax levied under Section 2-c, 2-d, 2-e, 2-f and 2-g, that has already been included in the measure of the tax levied under the preceding sections 2-a and 2-b. And Section 2-g also provides that those exercising privileges taxable under Section- 2-b, 2-c, 2-e, 2-f or 2-g producing minerals or timber, the production of which is taxable under Section 2-a, and using and consuming same in [fol. 45] business, shall be deemed to be engaged in the business of mining and producing minerals or timber for sale, profit or use, and shall be required to make return showing the gross proceeds of such business or the equivalent thereof in accordance with uniform and equitable rules for determining the value upon which such privilege tax shall be levied corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character by other taxpayers, and that the Tax Commissioner shall prescribe such rules.

Section 2-h allows in computing the tax a deduction of $10,000 from the value or gross income made the measure of the tax.

Section 4 of the Act exempts from the payment of any taxes certain insurance companies, mutual savings banks, labor and agricultural societies, cemetery companies, fraternal benefit societies, mutual building and loan associations, religious, charitable, scientific and educational institutions, chambers of commerce boards of trade and civic leagues.

Twenty-sixth. It appears from the foregoing statement, and will more fully appear from an examination of the Act itself, and it is a fact that the Act (except for the immaterial exceptions noted) purports to impose and levy annual privilege taxes in respect to all businesses or business

activities conducted within the state of West Virginia on and after July 1st, 1925, and that the tax imposed in each case is measured by a specified percentage of the gross proceeds or gross income either actually derived or estimated, in the manner provided, as derivable from each such business or business activity. It also appears and is a [fol. 46] fact that the Act, under Section 2-a, purports to tax as one single business activity, the business of mining, or producing, transporting and selling natural gas, when transported and sold by the producer, at the rate of 1-17/20 of 1% of the gross proceeds of such business; and, under Section 2-c, purports to tax all businesses of selling any tangible property, real or personal, including natural gas and oil when sold by other than the producer, at the rate of 2/10 of 1% of the gross income of such business unless conducted by a wholesaler or jobber, then at the rate of 1/20 of 1% of gross income; and, under Section 2-d, purports to tax all businesses of transporting natural gas or oil by means of pipe lines at the rate of 1% of gross income, but excepts from out the measure of this last tax any gross revenue derived from transportation in interstate commerce.

Twenty-seventh. Plaintiff further avers that it is a well known fact that the larger of the gas and oil companies engaged in the business of producing and purchasing natural gas in West Virginia, of which plaintiff company is one have their own pipe line systems for transporting the gas from the places of production and purchase to the places of use and consumption within and without the state of West Virginia, and that these companies together transport, through their own pipe lines, and sell the major portion of the gas produced and purchased by them in West Virginia for use and consumption outside the state and in commerce between West Virginia and other states of the United States; and plaintiff avers that with this fact in mind this Act was drafted with the deliberate purpose of [fol. 47] reaching and burdening, and the necessary effect and operation of the Act will be to burden directly and substantially by the taxes imposed under Section 2-a and 2-c, the interstate businesses of plaintiff company and such other companies, consisting of producing, transporting and sell-

ing natural gas, and of purchasing, transporting and selling natural gas in interstate commerce, which businesses, in the case of plaintiff, have been hereinbefore fully described.

Twenty-eighth. It is apparent from the provisions of said Act, and from its necessary construction, operation and effect, and from the character of plaintiff's business as hereinbefore fully described, and is a fact, that Section 2-a of the Act, with respect to plaintiff, imposes, as above averred, an annual privilege tax as a direct burden and charge on plaintiff's business of mining or producing, transporting and selling natural gas in commerce between West Virginia and the State of Ohio, and the Commonwealth of Pennsylvania, being conducted pursuant to and in fulfillment of prior contract obligations with the purchasing companies hereinbefore enumerated, and especially upon that part of its said business which consists of transporting and delivering the gas produced, pursuant to and in fulfillment of said prior contracts of sale to said purchasing companies, and it is also apparent and a fact that such sales of natural gas in interstate commerce by plaintiff, being so taxed under Section 2-a at the rate of 1 17/20 of 1%, are taxed at a much higher rate than had they been taxed with other sales under Section 2-c, at the rate of 2/10 of 1% of [fol. 48] the gross proceeds; and it is also apparent and a fact that such transportation of natural gas in interstate commerce by plaintiff, being so taxed under section 2-a at the rate of 1 17/20 of 1%, is taxed at a much higher rate than had it been taxed with other transportation of natural gas and oil by means of pipe lines, under section 2-d at the rate of 1% of the gross income, and not only so, but also as before shown, Section 2-d would have expressly excepted from the measure of the tax imposed such gross income insofar as it is derived from transporting natural gas and oil in interstate commerce.

And plaintiff avers the fact to be that its business activity of transporting and its business activity of selling the gas, especially when such transportation and sale are in interstate commerce, as has already been shown to be the case, as to by far the major portion of the gas produced by it, do in fact more than double or treble the gross proceeds

which are made the measure of the tax over what they would be if the gross proceeds of its mining business alone were used as such measure or, in other words, if the gas was valued at the mouth of the wells, so that it is a fact that the business of transporting and selling the gas, which the Act treats as part of the business of mining and producing natural gas, are the sources of as much, and often of more than twice as much revenue or of gross proceeds as could or would be derived from the business of mining or producing alone; and it is also true that even when the transportation and sale are local and the gas transported for use and consumption within the state of West Virginia, the gross proceeds measuring the tax are at least double what the proceeds would be if the gas was not transported but [fol. 49] sold locally or valued at the mouth of the well.

Twenty-ninth. Plaintiff also avers that the said sales of the gas produced by it pursuant to and in fulfillment of its above mentioned gas purchase agreements to said purchasing companies, are sales, under the terms of said Act, made before the gas is transported out of the state, for plaintiff produces this gas for the purpose of filling the orders contained in said gas purchase agreements and the gas is applied on account of these orders as it moves from the mouth of the wells from which it is produced, and the places of delivery and of change of ownership and control as between plaintiff and said purchasing companies are all within West Virginia or at points on its state line, and under the terms of the Act the entire gross proceeds or gross revenue derived from plaintiff's business of transporting and selling such gas in interstate commerce, and for consumption and use outside of West Virginia, are directly burdened by the tax levied under Section 2-a of said Act. And the rules promulgated by the Tax Commissioner (Special Provisions Relating to Producers, 8-A) expressly provide that such selling prices shall be conclusively deemed to determine the value which is made the measure of the Tax imposed under Section 2-a.

Thirtieth. Plaintiff also avers that its purchased gas purchased from others in West Virginia, which, with its produced gas completes its deliveries under said gas purchase agreements to said purchasing companies, is pur-

chased in contemplation of being so applied and is delivered [fol. 50] into the above described pipe line system of plaintiff and transported continuously and uninterruptedly, commingled with its produced gas, to the points of delivery to said purchasing companies at the state line, and other places of delivery to such companies, and that its sale and transportation of this gas and delivery is in interstate commerce or commerce between the State of West Virginia and other states in the United States, and that this Tax Act, under Section 2-c, purports to levy a tax on such sales of natural gas and is construed and interpreted by the Tax Commissioner, in the Rules and Regulations promulgated by him and in the forms prescribed for making return, to so tax such sales of purchased gas as are described in this paragraph. And plaintiff avers that said sales of such purchased gas by it are sales, under the terms of said Act, made before he gas is transported out of the State, and under the terms of the Tax Act and Rules and Regulations prescribed by the Tax Commissioner, the gross proceeds of such sales (or gross income) are conclusively deemed to determine the value which is made the measure of the tax imposed under Section 2-c.

Thirty-first. At the time of the passage of this Act, and for many years prior to its passage much more than one-half of all the natural gas produced in West Virginia was, and had been, and is now being, produced and purchased and transported by means of pipe lines owned and operated by the producers and purchasers to places outside the state, and into other states in continuous and uninterrupted [fol. 51] transit by means of pipe lines in interstate commerce for consumption and use within those states. Some years ago it was seen that the market for natural gas, both within and without the state, was rapidly expanding and that the available supply was diminishing each year, and shortages in deliveries and in the supply began to occur and have occurred in the past few years both in West Virginia and in other states in which the West Virginia gas, as here, above shown, is the sole or primary supply and these shortages have occurred principally in cold weather, and it is expected will and must occur with increasing frequency in the future. And plaintiff avers that these con-

ditions and this prospect have resulted in the adoption of the policy by the State of West Virginia, and that it has been the policy of the state for the last several years, beginning at least more than five years ago, to restrict, regulate and burden the exportation of natural gas and to burden and unjustly and unfairly discriminate against those engaged in the business of producing, purchasing, transporting and selling natural gas in commerce between West Virginia and Pennsylvania and Ohio and other states of the United States. This policy was first incorporated into the law of the state by the enactment of the so-called "Steptoe" Law (Chapter 71, House Bill No. 59, of the Acts of the Legislature of West Virginia of the Regular Session, 1919), the avowed purpose of which was to restrict the exportation of natural gas from the State and to prefer as to the available supply of natural gas, consumers living within the State, to all consumers living outside the State of West Virginia. In causes of which the Federal Supreme Court [fol. 52] took original jurisdiction this Act was held invalid. Also, following out the same policy, the State Legislature enacted a so-called privilege Tax Act (Chapter 5, House Bill 3, of the Acts of the Legislature of West Virginia of the Extraordinary Session, 1919), which imposed annual privilege taxes, for the privilege of engaging or continuing in the business of the transportation of oil or natural gas by means of pipe lines for sale to consumers within or without the state or for use within or without the state, of two cents (2c) per barrel for each barrel of oil, and one-third of one cent for each one thousand (1,000) cubic feet of gas so transported. This Act also was held unconstitutional by the Supreme Court of the United States insofar as it purported to tax the business of transporting these minerals in interstate commerce, and following the determination by the Federal Supreme Court of the extent to which these minerals were moving in interstate commerce, the Supreme Court of Appeals of the State of West Virginia held the Act invalid as not carrying out the manifest intent of the Legislature. And plaintiff further avers that this policy thus incorporated into the law of the state but till now so rendered inoperative, is again sought to be established and, that this Tax Act, while perhaps more skill-

fully drawn to conceal its true intent, is nevertheless but another deliberate and studied effort to accomplish the same result, and plaintiff avers the fact to be that the necessary effect and operation of this Tax Act will be not only to burden directly the commerce, between West Virginia and other states of the Union consisting of producing, pur- [fol. 53] chasing, transporting and selling natural gas and oil, but also to unlawfully and unjustly discriminate against those, of which plaintiff is one, engaged in such interstate commerce business, and those producing and purchasing natural gas and selling the same locally for consumption or use in West Virginia.

Thirty-second. Plaintiff is incorporated, as before shown, under the laws of the State of West Virginia, and is a public service corporation under the laws of the state, and is required by law to continue in the public service of supplying natural gas within the state to the communities in which it is now distributing gas to consumers and may not, under the state law, relinquish its local public service business of supplying natural gas to consumers within the state of West Virginia, and at the same time continue to mine and produce, transport and sell natural gas, or to purchase, transport and sell, natural gas, exclusively in interstate commerce, but, under the terms of this Tax Act and under the rules and regulations which the Tax Commissioner has adopted and promulgated pursuant to express authority vested in him by said Tax Act, plaintiff company is required to make return on the forms prescribed by the State Tax Commissioner and such returns, and the taxes shown to be due, are required to be transmitted and paid to the Tax Commissioner, for the first quarter, on or before the 30th day of October, 1925, and the making of such return and payment of the taxes shown to be due are made a condition which plaintiff must perform in order to lawfully continue in its interstate business, [fol. 54] and if plaintiff makes no return and pays no tax it will be guilty and be convicted of a misdemeanor and be subjected to the payment of a fine of $1,000 and the Tax Commissioner will secure information and make return and assess taxes, in exhorbitant amounts, against plaintiff and such returns and assessments are made final and conclusive

by the Act and the State Tax Commissioner and his co-defendant, the Attorney General, will proceed to enforce the collection of said taxes including the costs of collection and penalty of 5% of the amount of the tax if not paid within 30 days, and the additional penalties of 2% for each succeeding 30 days the tax remains unpaid, and plaintiff has made no return and will make no return because it is informed and believes that said Tax Act is unconstitutional, null and void.

Thirty-third. Plaintiff avers this Tax Act purports to classify business activities conducted within the state into many classes for revenue-tax purposes, including in some instances the same activity in two classes, and, to levy annual privilege taxes, for the privilege of engaging or continuing in the businesses so classified, at unequal rates and in unequal amounts, both as between the classes and, the activities placed in the same class, and plaintiff's businesses of mining or producing natural gas and oil and transporting the same are taxed at much higher rates and in much larger amounts than any other business activity in their respective classes and in any of the other classes; and the taxes levied for the privilege of mining or producing natural gas and transporting the same are so measured or deter- [fol. 55] mined under the provisions of the Act as to be, where the gas is exported out of West Virginia, more than double the amount they would be, were the gas distributed for consumption within the state. Plaintiff also avers, as hereinbefore more particularly shown, that the structure of this Tax Act is such as to impose unequal privilege taxes and taxes at different rates upon those engaged in the same occupation of mining or producing natural gas; as to impose unequal privilege taxes or taxes at different rates upon those engaged in the business of selling natural gas; as to impose unequal privilege taxes or taxes at different rates upon those engaged in transporting natural gas and oil by means of pipe lines; and the Act, in addition, expressly, unfairly and unlawfully exempts all business occupations from taxation, the gross income or gross proceeds of which do not exceed Ten Thousand ($10,000.00) Dollars, and such discriminations and inequalities in the taxes, and in the rates of the taxes thus levied are unlawful and were in-

tended to be to the prejudice of plaintiff and all those engaged in the businesses of producing and purchasing and exporting, or transporting and selling natural gas, in commerce between the State of West Virginia and other states of the United States, and for use and consumption without the State of West Virginia, and such discriminations are in substantial amounts and of such nature as to require plaintiff to pay double and treble the privilege taxes others are required to pay who are not engaged in exporting natural gas out of the State of West Virginia.

[fol. 56] Thirty-fourth. Plaintiff having shown the provisions of this Tax Act, and its necessary operation and effect, and the construction placed thereon by the Tax Commissioner and appearing from the returns, rules and regulations adopted and promulgated by said Commissioner in the performance of the duty imposed upon him by said Act; the general taxing system in force in the State of West Virginia and the several taxes which plaintiff has paid annually and must continue to pay; that plaintiff's chief business is and has for many years been the production and purchase of natural gas intended to be, and in fact, transported and sold in interstate commerce for consumption and use without the State of West Virginia; that 82 per cent of the gas produced and purchased by it is so produced, transported and sold; that as to the residue of 18 per cent, less the gas used in its own operations, plaintiff is required by the laws of West Virginia to continue in the public service of supplying natural gas to consumers within the state and may not, under the State law, relinquish entirely its local or intrastate deliveries of gas and continue to transport gas by means of its pipe lines exclusively in interstate commerce; that the said Act does not impose uniform and equal taxes but unequal taxes unjustly and unlawfully discriminatory in respect to those exercising the same privilege and denies to them the equal protection of the laws; that the said Act purports to classify business activities conducted within the state into many classes for taxation for state-revenue purposes and to impose annual privilege taxes for the privilege of engaging or continuing in such businesses so classified and at unequal rates and in [fol. 57] unequal amounts and purports to levy the very

highest taxes of all in respect to plaintiff's businesses; and that the taxes imposed by said Act for the privilege of engaging in certain businesses, are a direct burden upon the business of plaintiff consisting as above shown, primarily, of mining and purchasing in West Virginia and transporting through and out of West Virginia and selling natural gas for use and consumption outside of West Virginia, avers and charges that for these reasons as well as many other reasons and grounds not hereinbefore specified said Tax Act is unconstitutional, illegal and void and its necessary operation and effect violates the rights of plaintiff—

(1) Under the Constitution of the United States of America in that it imposes directly and immediately a burden upon, and hampers and restricts commerce between the State of West Virginia and the State of Ohio and Commonwealth of Pennsylvania and other States in violation of Section 8, Article I; in that the Act places a burden or impost, or duty or charge without the consent of Congress, and not for inspection purposes under any State inspection law, upon the exportation of natural gas out of the State of West Virginia into other states of the United States of America in violation of Section 10, Article I; in that the enforcement of said Act will deprive plaintiff of its property without due process of law, in violation of Article XIV of the Amendments to the Constitution of the United States; and in that said Act and the necessary effect and enforcement of the same will deny plaintiff the equal protection of the [fol. 58] law in violation of Article XIV of the Amendments to the Constitution of the United States, and

(2) Under the Constitution of the State of West Virginia in that the said Tax Act directly violates Section 1, Article X which prescribes that all taxation shall be equal and uniform throughout the State and that no one species of property for which a tax may be collected shall be taxed higher than any other species of property of equal value and that the taxation of privileges and franchises of persons and corporations shall be by uniform and equal laws; in that said Tax Act directly violates Section 39 of Article VI which prescribes that the Legislature shall not (except as therein noted) pass any local or special laws; in that said Tax Act makes it a misdemeanor for the taxpayer not to make return

and imposes excessive fines and penalties not proportionate to the character and degree of the offense purported to be created in violation of Article III, Section 5; and in that the enforcement of said Act will constitute the taking of plaintiff's property for public use without just compensation and without payment or security of payment therefor, and without compensation to plaintiff, ascertained by an impartial jury of twelve freeholders and without due process of law, in violation of Article III, Section 9 and Section 10, and

(3) Under the Constitution of the United States, the laws enacted by the Congress, and the Constitution of the State of West Virginia, because if held to be a tax for the privilege of doing a local intrastate business, still plaintiff com- [fol. 59] pany is compelled by the Laws of the State of West Virginia to continue its intrastate and local business within the state, and may not relinquish the same and continue to conduct a purely interstate business of producing, purchasing, transporting by means of its pipe lines, and selling gas in interstate commerce and the payment of such tax is made a condition which must be complied with by plaintiff in order to lawfully continue in the conduct of its purely interstate business.

Thirty-fifth. Plaintiff further charges it is without an adequate remedy at law and that it has the right to invoke the aid of a court of equity to enjoin the enforcement of this Tax Act against it, its agents, servants and employees and the imposition of fines and penalties upon it and them for continuing to conduct plaintiff's business of producing, purchasing, transporting and selling natural gas in interstate commerce without making return and without paying the privilege taxes imposed and levied under said Act. For, if plaintiff should make return and should pay the taxes, or make return and refuse to pay the taxes, nevertheless, the taxes will be assessed by the Tax Commissioner and in view of the high rates applicable to and the volume of plaintiff's business, as hereinabove shown, and the gross proceeds thereof and its gross income or revenue therefrom, the aggregate amount of such taxes each year will be a very large sum, and the amount for the year commencing July 1st, 1925, will be in excess of $200,000 and the taxes will become a lien and cloud upon the title to its property in this amount with penalties and costs of collection and the State Tax

[fol. 60] Commissioner and his co-defendant, the Attorney-General, will proceed to collect the same by judicial proceeding and the taxes thus paid, or thus collected are required to be paid by the Tax Commissioner into the State Treasury, and would be paid into the State Treasury, and there is no provision in any law of the State of West Virginia by which such sums so paid, or any part of the same, can be recovered from the State in the event the Court adjudges said Tax Act, or any part thereof, to be invalid, save and except by special appropriation by an Act of the Legislature appropriating public funds for this purpose; nor can plaintiff recover from the State any penalties or fines or costs which it may be required to pay under said Tax Act except by virtue of such Acts of the Legislature. And if plaintiff makes no return and pays no taxes assessed under said Act, and it will make no return and pay no such taxes because it is informed and believes that the Act, for the reasons already shown, and for many other reasons, is unconstitutional, null and void, it will be acting contrary to Section 3 which makes a return and payment of the taxes shown to be due, a condition to plaintiff's continuing in its business after June 30, 1925, and contrary to Sections 5 and 6, which require quarterly and annual returns and quarterly and annual payment of taxes. And the Tax Commissioner, pursuant to Section 8, will make return for and assess taxes against the plaintiff in case of its default, and the Tax Commissioner and his co-defendant, the Attorney-General, will undertake, by judicial proceeding, to collect such taxes pursuant to Section 11, and to convict plaintiff of a misde-[fol. 61] meanor under Section 15 for each time it fails to make return and to punish plaintiff and its agents by fine or imprisonment, or both, and the taxes assessed, and which will be assessed, and the judgments which will be entered in enforcement of the same, are made a lien on all property of the plaintiff, and will be a cloud on the title to plaintiff's property and its business, and its interstate commerce business will be hampered and interrupted and a multiplicity of suits will result and irreparable injury will be done to plaintiff's business and to the public being served by plaintiff, directly, or indirectly, and, especially to those purchasers of natural gas from plaintiff, and their consumers in Ohio and Pennsylvania, entirely, or almost entirely, dependent upon

plaintiff, as hereabove fully set forth, for the gas distributed and consumed by them respectively.

Thirty-sixth. Wherefore plaintiff avers it defends against the enforcement of said Tax Act upon the ground that any and all assessments of taxes made thereunder upon it or its property, will be in violation of the Constitution of the United States and in violation of the Constitution of West Virginia and, that said Tax Act is all together and for all purposes and in its entirety null and void and of no effect, and that plaintiff does not have a plain adequate or complete remedy at law, and prays that the defendant, Grant P. Hall, State Tax Commissioner of the State of West Virginia, and all persons acting under his authority or direction, be perpetually inhibited, enjoined and restrained by preliminary injunction to be made permanent on final hearing, from en- [fol. 62] forcing, or attempting to enforce in any manner, the said Tax Act, or any part thereof, against plaintiff or its property, and from requiring it to make any return or report to him under said Tax Act, and from assessing upon its property, or against it, any tax thereunder, and from collecting, or proceeding to collect from it, in any may, any such tax or any penalty or fine prescribed by said Tax Law and from instituting any prosecutions thereunder, and that the defendant, Howard B. Lee, Attorney General of the State of West Virginia, and all persons acting under his authority, advice or direction, be perpetually inhibited, enjoined and restrained by preliminary injunction to be made permanent on final hearing, from enforcing, or attempting to enforce any and every part of this Act against plaintiff, and from proceeding to have plaintiff, its property, agents or employees held liable for any tax, penalty or any fine imposed, and from instituting any prosecutions thereunder, and that said Act be decreed to be null and void as to plaintiff, its property, franchises and business; and for such other and further general relief as it is entitled to in the premises, and as to equity appertaineth.

And it will ever pray, etc.

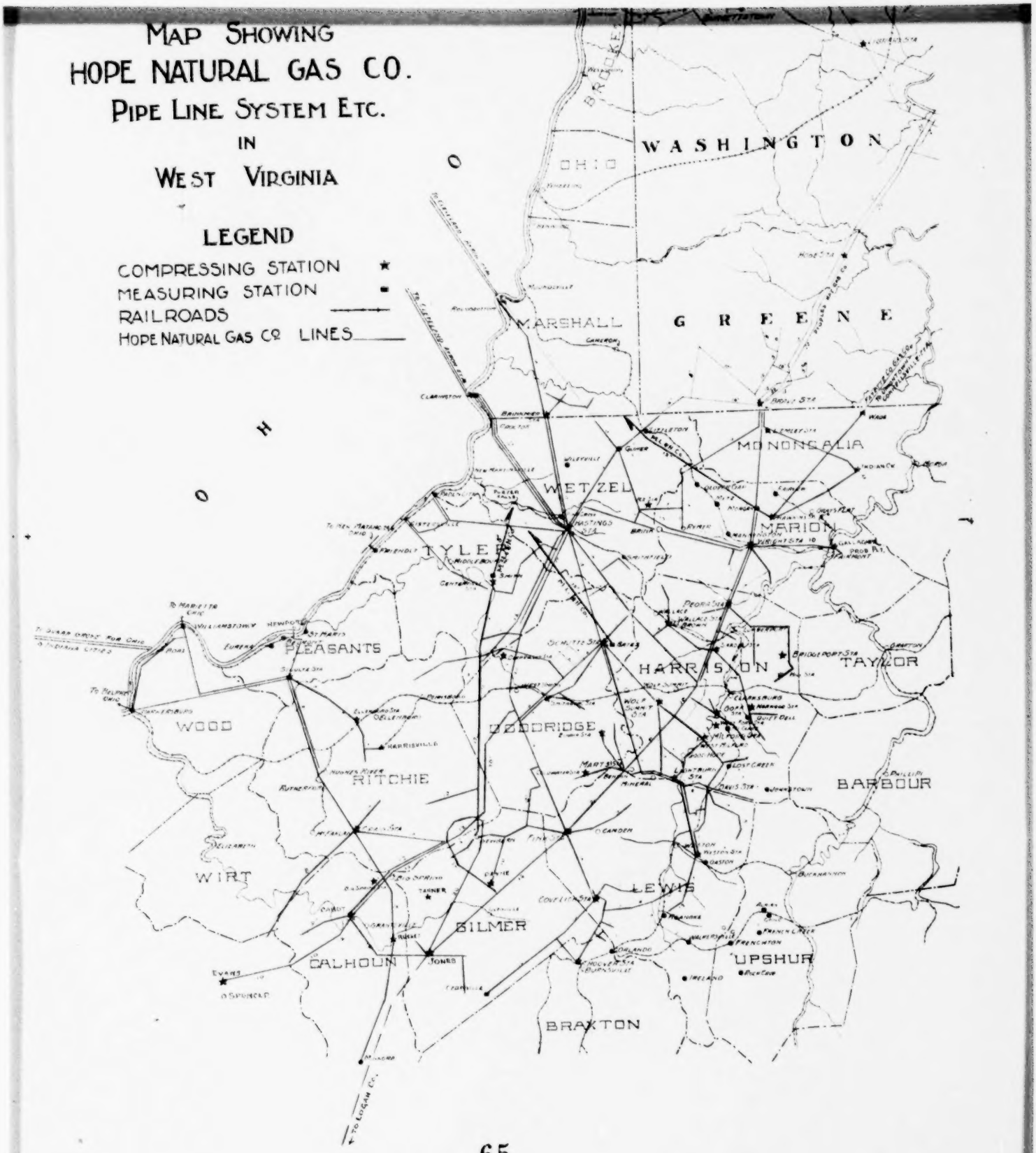
PLAINTIFF'S EXHIBIT "NO. 6". TO BILL OF COMPLAINT.

MAP SHOWING
HOPE NATURAL GAS CO.
PIPE LINE SYSTEM ETC.
IN
WEST VIRGINIA

LEGEND

COMPRESSING STATION ★
MEASURING STATION ■
RAILROADS ——
HOPE NATURAL GAS CO LINES ——




MAP SHOWING
HOPE NATURAL GAS CO.
PIPE LINE SYSTEM ETC.
IN
WEST VIRGINIA
LEGEND
COMPRESSING STATION
MEASURING STATION
RAILROADS
HOPE NATURAL GAS CO LINES
OHIO
WASHINGTON
MARSHALL
GREENE
MONONGALIA
WETZEL
MARION
TYLER
PLEASANTS
HARRISON
TAYLOR
WOOD
DODDRIDGE
RITCHIE
BARBOUR
WIRT
LEWIS
GILMER
CALHOUN
UPSHUR
BRAXTON

[fol. 63] Witness the corporate name and corporate seal of Hope Natural Gas Company, a corporation, affixed hereto by John B. Corrin, its Vice-President.

Hope Natural Gas Company, by Jno. B. Corrin, Vice-President. H. D. Rummel, Charles Powell, Kemble White, Anthony McCue, S. E. W. Burnside, Edward M. Borger, Arthur E. Young, Counsel for Plaintiff.

[fol. 64] *Duly sworn to by John B. Corrin. Jurat omitted in printing.*

(Here follows Plaintiff's Exhibit "No. 6" to Bill of Complaint, marked side folio page 65)

[fol. 66] In Court of Common Pleas of Kanawha County

Order Refusing Temporary Injunction

On the 28th day of October, 1925, came the plaintiff, Hope Natural Gas Company, a corporation, by H. D. Rummel, Charles Powell, Kemble White, Anthony McCue, S. E. W. Burnside, Edward M. Borger and Arthur E. Young, its counsel, and pursuant to notice duly served upon the defendants, moved the Court to award it a temporary injunction, as prayed in the bill of complaint filed herein on the 23rd day of October, 1925, against the defendants Grant P. Hall, State Tax Commissioner of the State of West Virginia, enjoining, restraining and inhibiting said Grant P. Hall, State Tax Commissioner, as aforesaid, and all persons acting under his authority or direction, from enforcing or attempting to enforce in any manner against the said plaintiff that certain Act, or any part thereof, designated as Chapter 1 of the Acts of the Legislature of West Virginia of the Extraordinary Session of 1925, entitled "An Act to provide for raising of additional public revenue by a tax upon the privilege of engaging in certain occupations; to provide for the ascertainment, assessment, and collection of such tax; to provide penalties for violations of the terms hereof; and to repeal certain statutes";

and also from requiring it to make any return or report to said Tax Commissioner under the said Act, and from assessing upon its property, or against it, any tax thereunder, and from collecting, or proceeding to collect from it, in any way, any such tax or penalty or fine prescribed by said [fol. 67] Act, and from instituting aay prosecutions thereunder; and enjoining, restraining and inhibiting the said Heward B. Lee, Attorney General as aforesaid, and all persons acting under his authority, advice or direction, from enforcing or attempting to enforce any and every part of said Act against said plaintiff, and from proceeding to have the plaintiff, its property, agents or employees held liable for any tax, penalty or any fine imposed, and from instituting any prosecutions thereunder. And said plaintiff tendered and read in support of said motion, the said bill of complaint and exhibits heretofore filed herein.

And thereupon came the said defendants Grant P. Hall, State Tax Commissioner of the State of West Virginia, and Howard B. Lee, Attorney General of the State of West Virginia, in person and by Fred O. Blue, T. C. Townsend, John T. Simms, R. A. Blessing and R. D. Steed, their counsel, appearing in response to notice duly served upon them, and here resisted the said motion of the plaintiff for a temporary injunction herein; and the Court heard the argument of counsel thereon.

Upon consideration of all of which, the Court is now of opinion that in view of statements made at the bar of the Court by counsel for the defendants, that neither the defendants nor the State of West Virginia will undertake to enforce against the plaintiff fines, penalties, forfeitures or collection costs provided in the said Act, for any failure [fol. 68] of the plaintiff during the pendency of this suit to make returns, reports or payment of any taxes prescribed by said Act, the Court is of opinion that there is no necessity to award the temporary injunction prayed for; and therefore doth refuse to award such temporary injunction.

The foregoing order having been directed to be entered herein on the 30th day of October, 1925, but inadvertently omitted from the record, the same is now ordered to be entered on record, now for then.

(Endorsed:) Enter: Morgan Owen, Judge. Entered in Chancery Order Book Nov. 14, 1925. No. 6, Page 117.

[fols. 69 & 70] In Court of Common Pleas of Kanawha County

[Title omitted]

Demurrer and Joint Answer—Filed at December Rules, 1925

To the Honorable Morgan Owen, Judge of the Court of Common Pleas of Kanawha County, West Virginia:

The demurrer and joint answer of Grant P. Hall, State Tax Commissioner of the State of West Virginia, and Howard B. Lee, Attorney General of the State of West Virginia, to the bill of complaint filed against them by the Hope Natural Gas Company, a corporation, in said court.

The defendants demur to the plaintiff's bill and say that the same is not sufficient in law, and for further and specific grounds of demurrer say:

1. The tax under Section 2-a of the Act complained of, as to the plaintiff, is an annual tax for the privilege of engaging or continuing in the business of mining and pro- [fol. 71] ducing oil and natural gas for sale, profit or use (in other words an occupation tax for mining and producing oil and natural gas) the measure of the tax being the value of the entire production thereof in the State of West Virginia, regardless of the place of sale or that deliveries thereof may be made to points out of the state; the amount of the tax is equal to the value of the production as shown by the gross proceeds from the sale thereof by the producer and the value of the production as between affiliated companies, ascertained and determined in the manner prescribed by the Act, multiplied by 1% as to oil and 1 and 17/20 of 1% as to natural gas. Such tax is not a burden upon nor interference with interstate commerce, nor a duty or charge upon exportation of gas out of the state, nor does such tax conflict with any provision of the Constitution of the United States or the Constitution of the State of West Virginia.

2. The plaintiff is not subject to a sales tax under Section 2-c or to a public service company tax under Section

2-d as to the oil and natural gas produced by it in the state, the value whereof is included in the measure of the tax levied under Section 2-a.

3. Of the natural gas which the plaintiff purchases in the State of West Virginia and sells part thereof in local or intra-state business in said state (as distinguished from a public service business) the plaintiff is liable to a tax under Section 2-c as to such part, equal to 2/10 of 1% of the gross income therefrom, but it is not subject to such tax as to the part of such gas which it sells in interstate business. As to the natural gas which plaintiff purchases in said state and sells and distributes to its local consumers thereof in its local and intra-state business in said state as a public service corporation, it is subject to a tax, under Section 2-d, equal to 2/5 of 1% of the gross income from its local and intra-state business.

[fol. 72] 4. It does not appear that the enforcement of the tax complained of will result in irreparable injury to the plaintiff; besides, it has an adequate remedy at law.

5. No tax has been assessed on the plaintiff under the Act nor have the defendants done any such things or required of the plaintiff the doing of any such things as to indicate that the assessment of any tax thereunder is or will be, in violation of the Constitution of the United States or the State of West Virginia.

6. Plaintiff has made no proper return to the State Tax Commissioner showing computation of the amount of any tax against it under the provisions of the Act; it is apparent that the plaintiff is engaged in business in the State of West Virginia and apparent that it is subject to tax under the Act; yet the plaintiff has not paid, or tendered to pay the tax or any part thereof. Plaintiff, in any event, is not entitled to injunctive relief without such payment or tender thereof.

7. It does not appear that the Act violates any provisions of the Constitution of the United States or the Constitution of the State of West Virginia.

8. And, for the foregoing and other grounds which may be assigned and presented on the argument.

And now for answer to the plaintiff's bill, so far as defendants are advised it is necessary or material for them to answer (the paragraphs hereof corresponding in numbers with plaintiff's bill) they answer and say:

First. They admit that plaintiff is a corporation organized and existing under the laws of the State of West Virginia, with its principal office and place of business at Clarksburg, in Harrison County, said State; they further admit that plaintiff's chief business is now and has been the production and purchase in West Virginia, of natural gas; and they further admit that the plaintiff has pipe lines which it uses for keeping and having gas produced and purchased by it and for transporting the same from [fol. 73] places of production and purchase, which are means incidental for keeping, having and delivering gas to its purchasers thereof, and that such lines extend out of the state and that gas produced and purchased by the plaintiff in West Virginia is delivered to other companies at the state line for transportation and sold by them to consumers in the cities and towns of the Commonwealth of Pennsylvania and the State of Ohio; they further admit that the smaller portion of the gas produced and purchased by the plaintiff in West Virginia is sold and distributed to consumers in said state, plaintiff's pipe lines being used to distribute gas to its consumers therein.

Second. They admit that the defendant Grant P. Hall is the duly appointed and qualified State Tax Commissioner of the State of West Virginia. That his duties, in respect to the Act complained of, are set forth therein and in the general laws of the state.

Third. They admit that the defendant Howard B. Lee is the duly elected and qualified Attorney General of said state. That his duties in respect to the Act complained of are set forth therein and in the general laws of the state.

Fourth. They admit that the title of the Act complained of is as set forth in Paragraph Fourth of plaintiff's bill.

Fifth. They admit the allegations of the Fifth paragraph of plaintiff's bill.

Sixth. They deny so much of the Sixth paragraph of the plaintiff's bill wherein it alleges that the defendant State

Tax Commissioner, in and by his said forms, rules and regulations, "has declared that said Act imposes a tax for the particular privilege of mining or producing, including transportation and selling when transported and sold by the producer, minerals (including natural gas and oil) and [fol. 74] lumber mined and produced within the State of West Virginia, and transported and sold by the producers either for consumption or use within the state or in commerce between West Virginia and other states of the United States, for use and consumption in such other states; and in and by his said forms and rules and regulations the State Tax Commissioner has declared that said Act also imposes a tax for the particular privilege of selling natural gas and oil for delivery and use or consumption outside the state, in commerce between West Virginia and Pennsylvania and Ohio and other States of the United States." And defendants aver that such part of said paragraph quoted does not express the true and proper interpretation of the forms, rules and regulations referred to therein.

Seventh. They admit the defendant State Tax Commissioner has notified plaintiff that it is subject to the tax imposed by the Act so far as the same is applicable to any and all businesses of the plaintiff transacted in the State of West Virginia, and that it must make return in accordance with the prescribed rules and regulations on or before October 30th, 1925, upon forms prepared and furnished by him for such return for the period mentioned in the Seventh paragraph of plaintiff's bill.

Eighth. They do not admit that they would take all of the proceedings mentioned and set forth in the Eighth paragraph of the plaintiff's bill, yet, they will take such proceedings, proper under conditions as they develop, in keeping with their duties under the Act and the laws of the state.

Ninth. Defendants are not advised why the plaintiff has refused to pay its taxes under the Act, other than as set forth in its bill. These defendants, however, deny that the Act is unconstitutional, illegal, invalid and void in the case of the plaintiff, or because of the character of its business.

[fol. 75] Tenth. Defendants neither admit or deny the allegations in the Tenth paragraph of plaintiff's bill. They

aver, however, assuming such allegations to be true, that the State of West Virginia has the right, nevertheless, to impose an annual tax on the plaintiff for the privilege of engaging or continuing in the business of mining and producing oil and natural gas for sale, profit or use (an occupation tax for producing oil and natural gas) and to make the measure thereof the value of the entire production therein, ascertained as provided by the Act, regardless of the place of sale or that deliveries may be made to points out of the state; and, further, that the said state has the right to impose an annual tax on the plaintiff for the privilege of selling gas which it purchases and sells in local or intrastate business, and, also, which it purchases, sells and distributes to local consumers thereof in its local and intrastate business in said state as a public service corporation.

Eleventh. Defendants for answer to the allegations of the Eleventh paragraph of plaintiff's bill, adopt as and for their answer thereto like answer as that made by them in the Tenth paragraph hereof.

Twelfth. Defendants for answer to the allegations of the Twelfth paragraph of plaintiff's bill, adopt as and for their answer thereto like answer as that made by them in the Tenth paragraph hereof.

Thirteenth. Defendants for answer to the allegations of the Thirteenth paragraph of plaintiff's bill, adopt as and for their answer thereto like answer as that made by them in the Tenth paragraph hereof.

Fourteenth. Defendants for answer to the allegations of the Fourteenth paragraph of the plaintiff's bill, adopt as and for their answer thereto like answer as that made by them in the Tenth paragraph hereof.

Fifteenth. Defendants for answer to the allegations of the Fifteenth paragraph of plaintiff's bill, adopt as and for [fol. 76] their answer thereto like answer as that made by them in the Tenth paragraph hereof.

Sixteenth. Defendants deny that the five contracts mentioned and referred to in the Sixteenth paragraph of plaintiff's bill bind it, in express terms, to transport natural gas produced by it in the State of West Virginia into the States

of Ohio and Pennsylvania and in this connection defendants aver that the terms "transport," or "transportation" are not used in said contracts in setting forth the undertakings of the plaintiff thereunder. Defendants aver that they are informed, believe and so charge, that the respective prices to be paid to the plaintiff by the respective purchasers as agreed upon by said parties and set forth in said contracts are plaintiff's selling prices to the purchasers for part of the natural gas which it shall thereafter produce or purchase in the State of West Virginia and deliver to the respective purchasers at points mentioned in said contracts within said state or at the state lines between it and the states of Ohio and Pennsylvania. And defendants further aver that they are informed, believe and so charge, that none of said contracts require plaintiff to deliver gas from any particular well, group of wells, or particular section of its gas territory so that plaintiff has the right to and does deliver said gas (from its wells now numbering 3,178 scattered over its developed gas territory of 305,035 acres in part adjacent to Ohio and Pennsylvania) through its lines in West Virginia (described in plaintiff's bill as a "net work of pipe lines") from its wells nearest to the respective points of delivery as best serves the most convenient and economical delivery thereof: And defendants further aver and charge that plaintiff's said respective selling prices apply uniformly to all gas delivered to said respective purchasers regardless of whether the same is [fol. 77] produced or purchased by plaintiff at, near to or distant from the respective points of delivery mentioned in said contracts.

Seventeenth. Defendants deny that plaintiff's chief business is that of transporting gas in interstate commerce and further than this they neither admit or deny the allegations in the Seventeenth paragraph of plaintiff's bill.

Eighteenth. Defendants say it may be true that plaintiff, as incident to its business of producing natural gas, drills wells producing crude oil or petroleum in paying quantities but has never been and is not now engaged in the business of producing or transporting, by pipe line or otherwise, crude oil or petroleum. It may be true that any crude

oil or petroleum produced from wells drilled incident to plaintiff's business of producing natural gas is sold under agreement and has been so for years to the Standard Oil Company of New Jersey; and it may be true that such crude oil and petroleum is delivered, at the time of its discovery and production, and so requested to be, to the said Standard Oil Company at Bayway, N. J., by means of pipe lines to Bayway, State of New Jersey. Defendants aver, however, that crude oil or petroleum produced by the plaintiff, after being produced, is usually put in storage tanks at the wells and from time to time is gauged, that is, the number of standard barrels in the tanks is ascertained, and thereafter the crude oil or petroleum is run through gathering lines of the plaintiff to a common carrier pipe line (usually the Eureka Pipe Line) for movement to destination. Defendants aver and charge that such crude oil or petroleum has a fixed market value while in storage tanks at the wells for the different grade thereof, which market value is largely, if not absolutely, fixed and determined by the alleged purchaser from the plaintiff, or one of its agencies, and such market value published daily so that the value of [fol. 78] crude oil or petroleum at the point of production in the State of West Virginia, and while it is yet stored in tanks at the wells, is well known and established and it is this value which is the sale price and used as the measure of the tax.

Nineteenth. Defendants for answer to the allegations of the Nineteenth paragraph of plaintiff's bill, adopt as and for their answer thereto like answer as that made by them in the Tenth paragraph hereof.

Twentieth. Defendants for answer to the allegations of the Twentieth paragraph of plaintiff's bill, adopt as and for their answers thereto like answers as those made by them in the Tenth and Sixteenth paragraphs hereof.

Twenty-first. Defendants for answer to the allegations of the Twenty-first paragraph of plaintiff's bill, adopt as and for their answers thereto like answers as those made by them in the Tenth and Sixteenth paragraphs hereof.

Twenty-second. Defendants say there is nothing in the Act complained of which will cause the plaintiff to fail to deliver gas produced and purchased by it in West Virginia pursuant to its contracts, nor any provision therein which prevents or interferes with the plaintiff making such deliveries. For further answer to the allegations of the said paragraph defendants adopt as and for their answers thereto like answers as made by them in the Tenth and Sixteenth paragraphs hereof.

Twenty-third. Defendants, for answer to the allegations of the Twenty-third paragraph of plaintiff's bill, adopt as and for their answers thereto like answers as those made by them in the Tenth and Sixteenth paragraphs hereof.

Twenty-fourth. Defendants deny that the interpretation of the Act in question as the plaintiff attempts to interpret it in the Twenty-fourth paragraph of its bill, is the true interpretation thereof. And for further answer to the [fol. 79] further allegations of the said paragraph, defendants adopt as and for their answer thereto like answer as that made by them herein to the Tenth paragraph of said bill.

Twenty-fifth. Defendants for answer to the allegations of the Twenty-fifth paragraph of plaintiff's bill adopt as and for their answer thereto like answer as that made by them in the Tenth paragraph hereof.

Twenty-sixth. Defendants deny that the Act in question under Section 2-a thereof "purports to tax as one single business activity, the business of mining, or producing, transporting and selling natural gas, when transported and sold by the producer, at the rate of 1-17/20 of 1% of the gross proceeds of such business," as alleged in the Twenty-sixth paragraph of plaintiff's bill, and aver that such allegation is not true. And for further answer to the allegations of the Twenty-sixth paragraph of said bill defendants adopt as and for their answer thereto like answer as made by them in the Tenth paragraph hereof.

Twenty-seventh. Defendants say it is true that plaintiff (as well as other of the larger of the gas companies in the state engaged in like business as plaintiff) has pipe lines

which it uses for keeping, storing and having (after production) gas produced or purchased by it and for delivery thereof to consumers or purchasers, which pipe lines are means incidental to keeping, storing, having and delivering gas to its customers and purchasers in different places in the state and at the state lines; defendants further say it may be true that plaintiff and other large gas companies deliver the major portion of the gas produced and purchased by them to other companies at points in the state or at or near the state lines and that such other companies sell the gas to consumers in other states. Defendants deny that part of the Twenty-seventh paragraph of plaintiff's [fol. 80] bill, wherein it is alleged: "and plaintiff avers that with this fact in mind this act was drafted with the deliberate purpose of reaching and burdening, and the necessary effect and operation of the act will be to burden directly and substantially by the taxes imposed under Section 2-a and 2-c, the interstate businesses of plaintiff company and such other companies, consisting of producing, transporting and selling natural gas, and of purchasing, transporting and selling natural gas in interstate commerce, which businesses, in the case of plaintiff, have been hereinbefore fully described," and aver that such allegation of such paragraph is untrue.

Twenty-eighth. Defendants deny the allegations of the Twenty-eighth paragraph of the plaintiff's bill and say that the same are wholly untrue. Defendants deny that sales of natural gas in interstate commerce by plaintiff, if any such sales, are taxed under Section 2-a at the rate of 1-17/20 of 1%, these defendants averring that the tax under Section 2-a is one for the privilege of mining and producing natural gas but not a tax for the privilege of selling and transporting it, in interstate commerce, or otherwise, the amount of the tax being equal to the value of the production as shown by the gross proceeds from the sale by the producer and the value of the production as between the affiliated companies ascertained and determined in the manner prescribed by the Act multiplied by 1-17/20 of 1% as to natural gas. Defendants further aver that plaintiff is not subject to tax under Section 2-c as to the gas which it sells in interstate commerce; and they further aver that the plaintiff is not

engaged in the business of operating pipe lines carrying oil or gas and therefore it is not subject to the tax on such pipe lines under Section 2-d of the Act. Defendants aver that they are informed, believe and so charge that plaintiff's wells now numbering 3,178 are scattered over its developed gas territory of 305,035 acres in and throughout [fol. 81] nearly a score of counties and that such developed gas territory and a large number of said wells are located, in part, adjacent and near to Ohio and Pennsylvania and a part of said wells near points in the interior of the state where gas is delivered to the purchasing companies; and defendants further aver that they are informed, believe and so charge, that none of the contracts of plaintiff with the purchasing companies require the plaintiff to deliver gas from any particular well, group of wells, or particular section of gas territory, so that plaintiff has the right to and does deliver gas to its purchasers from its wells nearest to the respective points of delivery as best serves the most convenient and economical delivery thereof; and defendants further aver and charge that plaintiff's said respective selling prices apply uniformly to all gas delivered to said respective purchasers regardless of whether the same is produced or purchased by plaintiff at, near to or distant from respective points of delivery mentioned in said contracts: In other words, defendants are informed, so aver and charge, that the purchasers under the contracts pay no more for the gas delivered to them when it is produced many miles from the places of delivery than they do when it is produced at or nearer to the places of delivery mentioned in the contracts; defendants aver that the measure of the tax is one for the legislature, when acting within its constitutional limitations, and that it must be presumed that in fixing the measure the legislature took into consideration all facts and circumstances necessary for consideration in fixing and prescribing a fair and reasonable measure.

Twenty-ninth. Defendants deny that under the terms of the Act in question the entire gross proceeds or gross revenue derived from plaintiff's business of transporting and selling gas in interstate commerce and for consumption and use outside of West Virginia, are directly burdened by the

[fol. 82] tax levied under Section 2-a of said Act, as alleged in the Twenty-ninth paragraph of plaintiff's bill; and they further deny the interpretation attempted to be given to the rules promulgated by the defendant State Tax Commissioner as alleged and set forth in said Twenty-ninth paragraph. The defendants again aver that the tax under Section 2-a of the Act is not for the privilege of transporting and selling gas in interstate commerce, or otherwise, but is a tax for the privilege of mining and producing natural gas for sale, profit or use in this state, measured as prescribed by the Act.

Thirtieth. Defendant says it may be true, as alleged in paragraph Thirtieth, that plaintiff's "purchased gas," purchased from others in West Virginia, is purchased in contemplation of being delivered to the purchasers under the gas purchase agreements and that the "purchased gas" is commingled with plaintiff's produced gas and delivered to the purchasers at points of delivery; but defendants deny that the plaintiff is liable to a sales tax under Section 2-c of the Act as to the part of the purchased gas which it sells in interstate commerce; and defendants aver that the interpretation attempted to be given to the rules and regulations prescribed by the defendant State Tax Commissioner by the plaintiff is not the correct interpretation thereof.

Thirty-first. Defendants deny that the State of West Virginia has adopted a policy, and that it has been the policy of the said state for the past several years, beginning at least more than five years ago, to restrict, regulate and burden the exportation of natural gas and to burden and unjustly and unfairly discriminate against those engaged in the business of producing, purchasing, transporting and selling natural gas in commerce between West Virginia and Pennsylvania and Ohio and other states of the United States, and say that such allegations is untrue; and defend- [fol. 83] ants furthed deny that the act in question is a deliberate and studied effort to restrict, regulate and burden the exportation of natural gas and to burden and unjustly and unfairly discriminate against those engaged in the business of producing, purchasing, transporting and selling natural gas in commerce between West Virginia and said

states, as alleged in the Thirty-first paragraph of plaintiff's bill. And defendants further deny that allegation in the Thirty-first paragraph of plaintiff's bill wherein it is alleged: "Plaintiff avers the fact to be that the necessary effect and operation of this tax act will be not only to burden directly the commerce, between West Virginia and other states of the Union consisting of producing, purchasing, transporting and selling natural gas and oil, but also to unlawfully and unjustly discriminate against those, of which plaintiff is one, engaged in such interstate commerce business, and those producing and purchasing natural gas and selling the same locally for consumption or use in West Virginia," and defendants aver that such allegation is not true.

Defendants say that while plaintiff's pipe lines are used to transport natural gas produced and purchased by it, yet its pipe lines are also used as a place of storage for such gas, the same being the only place of storage thereof after such gas has left the wells, and they therefore aver that it is from such storage that plaintiff makes deliveries of its gas to consumers and purchasers. Defendants aver that natural gas is produced by drilling wells into gas containing strata or sands in the earth and that it is unlike other minerals and is, indeed, a mineral peculiar to itself. It is invisible and in a sense intangible and cannot be moved, handled, stored and delivered as other minerals; for illustration, they aver, that while coal may be stored in the open without restraint or protection, and even crude oil and [fol. 84] petroleum may be stored in open-top tanks, yet, when the seal of the gas-bearing sand is punctured and the sand itself penetrated, the natural gas therein, often having tremendous rock pressure of several hundred pounds to the square inch, must be stored by confinement in the well or in pipe lines of sufficient strength to resist its natural pressure or otherwise it will escape; and because of its natural pressure the gas will, when confined in pipe lines, travel or transmit itself to great distances without the aid of artificial means. Defendants aver that it is because of the peculiar nature of natural gas that no company is engaged in the business of transporting it as a carrier thereof for others and they are informed and so charge that the plaintiff has always declined and now declines to receive gas

from others for transportation as a carrier, claiming that the transportation thereof, in the business as a carrier, is not pactical, and this gives to the plaintiff and other gas companies like it a decided advantage when purchasing gas from producers without a pipe line system. Natural gas may be and is taken from the pipe line system and, under reduced pressure, used directly, and without refinement or treatment, for heat, light and power wherein it differs from other products and things mentioned in the Act. Defendants further aver that natural gas is migratory and fugitive and often the gas produced by a well (and the same is true of crude oil or petroleum) may be drawn from the premises of others than the producer, and therefore is not the subject of absolute property, and being jure naturae it is capable of qualfied ownership only and belongs to him who first appropriates it. On the other hand coal, limestone, sand and timber, including crude oil or petroleum, are tangible and can be moved, handled, stored and delivered; they can be transported by wagons, trucks and railroad cars although crude oil and petroleum are more largely transported by pipe lines: They can be and are delivered to [fol. 85] the purchasers thereof at the place of production to be transported by themselves, or they can be and are delivered to the purchasers at the place of production to be transported by common carriers, while natural gas is not delivered by plaintiff and other gas companies like it to common carriers for transportation thereof for or to consumers or purchasers, but on the contray natual gas is gathered and assembled from plaintiff's many wells and from wells of those from whom plaintiff purchases and is stored in such wells and in plaintiff's pipe lines for delivery to consumers and purchasers, and, defendants aver that there is no other practical way for plaintiff to store and deliver gas to its consumers and purchasers. Coal, limestone, sand and lumber, including crude oil and petroleum, have market values, respectively, at the places of production, not merely local market values but well-known and well-established market values applicable throughout the state for products of like character. The beds or seams of coal, limestone and sand may be opened when discovered and left open indefinitely without loss or escape thereof or appreciable damage thereto, in a state of rest, and the extent and

quantity of such beds or seams may be definitely ascertained and determined, but such is not true as to natural gas or crude oil or petroleum. Coal, limestone and sand are subject to absolute ownership. Natural gas, crude oil or petroleum are natural products, limited as to quantity, with the peak of their production passed in West Virginia and the remaining supply thereof being rapidly depleted, and they cannot be replaced, while on the other hand lands from which timber has been cut may be reforested and the supply of coal, limestone and sand is practically inexhaustible.

Thirty-second. Defendants deny the allegation of the Thirty-second paragraph of plaintiff's bill wherein it is alleged: "The Tax Commissioner will secure information [fol. 86] and make return and assess taxes, in exorbitant amounts against plaintiff," and aver that the same is not true; and for further answer to said Thirty-second paragraph defendants adopt as and for their answer thereto like answer as that made by them in the Tenth paragraph hereof.

Thirty-third. Defendants deny each and every allegation set forth in the Thirty-third paragraph of plaintiff's bill and say that the same are wholly untrue, except that it is true that the Act in question does purport to clasify business activities conducted in the state into several classes for revenue tax purposes and other than as to this admitted part of the Thirty-third paragraph, the defendants aver that all of the rest of it, and every part thereof, is untrue.

Thirty-fourth. Defendants deny all of the following allegations of plaintiff's bill, in the Thirty-fourth paragraph thereof, wherein the plaintiff alleges "that the said Act does not impose uniform and equal taxes but unequal taxes unjustly and unlawfully discriminatory in respect to those exercising the same privilege and denies to them the equal protection of the laws; that the said Act purports to classify business activities conducted within the state into many classes for taxation for state revenue purposes and to impose annual privilege taxes for the privilege of engaging or continuing in such businesses so classified and at unequal rates and in unequal amounts and purports to levy

the very highest taxes of all in respect to plaintiff's businesses; and that the taxes imposed by said Act for the privilege of engaging in certain businesses are a direct burden upon the business of plaintiff consisting as above shown, primarily, of mining and purchasing in West Virginia and transporting through and out of West Virginia and selling natural gas for use and consumption outside of West Virginia, avers and charges that for these reasons as [fol. 87] well as many other reasons and grounds not hereinbefore specified said Tax Act is unconstitutional, illegal and void and its necessary operation and effect violates the rights of plaintiff—

"(1) Under the Constitution of the United States of America in that it imposes directly and immediately a burden upon, and hampers and restricts commerce between the State of West Virginia and the State of Ohio and Commonwealth of Pennsylvania and other States in violation of Section 8, Article 1; in that the Act places a burden or impost, or duty or charge without the consent of Congress, and not for inspection purposes under any State inspection law, upon the exportation of natural gas out of the State of West Virginia into other states of the United States of America in violation of Section 10, Article 1; in that the enforcement of said Act will deprive plaintiff of its property without due process of law, in violation of Article XIV of the Amendments to the Constitution of the United States; and in that said Act and the necessary effect and enforcement of the same will deny plaintiff the equal protection of the law in violation of Article XIV of the Amendments to the Constitution of the United States, and

"(2) Under the Constitution of the State of West Virginia in that the said Tax Act directly violates Section 1, Article X which prescribes that all taxation shall be equal and uniform throughout the State and that no one species of property for which a tax may be collected shall be taxed higher than any other species of property of equal value and that the taxation of privileges and franchises of persons and corporations shall be by uniform and equal laws; in that said Tax Act directly violates Section 39 of Article VII which prescribes that the Legislature shall not (except as therein noted) pass any local or special laws; in that said

Tax Act makes it a misdemeanor for the taxpayers not to make return and imposes excessive fines and penalties not [fol. 88] proportionate to the character and degree of the offense purported to be created in violation of Article III, Section 5; and in that the enforcement of said Act will constitute the taking of plaintiff's property for public use without just compensation and without payment or security of payment therefor, and without compensation to plaintiff, ascertained by an impartial jury of twelve free-holders and without due process of law, in violation of Article III, Section 9 and Section 10, and

"(3) Under the Constitution of the United States the laws enacted by the Congress, and the Constitution of the State of West Virginia, because if held to be a tax for the privilege of doing a local intrastate business, still plaintiff company is compelled by the laws of the State of West Virginia to continue its intrastate and local business within the State, and may not relinquish the same and continue to conduct a purely interstate business of producing, purchasing, transporting by means of its pipe lines, and selling gas in interstate commerce and the payment of such tax is made a condition which must be complied with by plaintiff in order to lawfully continue in the conduct of its purely interstate business."

And defendants aver that all and each of said allegations are not true.

Thirty-fifth. Defendants deny that the plaintiff is without an adequate remedy at law and deny that it has the right to invoke the aid of a Court of Equity to enjoin the enforcement of the Act in question against it, its agents, servants and employees; they also deny that the Act in question is unconstitutional, null and void; they also deny that the tax assessed, or which will be assessed, or any judgments entered in enforcement of the same, will hamper and interrupt any interstate commerce business which the plaintiff may be engaged in nor will irreparable injury be done to plaintiff's business and to the public being served [fol. 89] by it directly or indirectly, nor to the purchasers of natural gas from plaintiff and their consumers in Ohio and Pennsylvania, either entirely or almost entirely as al-

leged in plaintiff's bill; and for further answer to other allegations of the Thirty-fifth paragraph of plaintiff's bill, defendants adopt as and for their answer thereto like answer as that which they have made herein to the Tenth paragraph of the plaintiff's bill.

Thirty-sixth. Defendants deny that the enforcement of the act in question will be in violation of the Constitution of the United States and in violation of the Constitution of West Virginia, and they further deny that the Act is altogether and for all purposes and in its entirety null and void and of no effect and they further deny that the plaintiff is without adequate and complete remedy at law and deny that its prayer should be entertained or any relief given to it under the prayer of its bill; and now, having fully answered, they pray to be hence dismissed with their reasonable costs. And they will ever pray, etc.

Grant P. Hall, State Tax Commissioner of West Virginia; Howard B. Lee, Attorney General of West Virginia, by Their Counsel Howard B. Lee, Attorney General of West Virginia; R. Dennis Steed, Assistant Attorney General; R. A. Blessing, Assistant Attorney General; John T. Simms, Counsel State Tax Commissioner. T. C. Townsend, Fred O. Blue, of Counsel for the Defendants.

[fol. 90] *Duly sworn to by Grant P. Hall. Jurat omitted in printing.*

[fol. 91] In Court of Common Pleas of Kanawha County

Orders Amending Bill and Answer Respectively Joining Issue, and Filing Stipulation and Exhibits

This day came the plaintiff, by its counsel, and also came the defendants, by their counsel, and thereupon the plaintiff moved the court to amend its bill of complaint by entirely eliminating and striking therefrom Paragraph "Eighteenth" of the bill of complaint, without prejudice; and the defendants not resisting said motion, and the court being of opinion to grant the same, it is adjudged, ordered and decreed that said motion be granted and that Para-

graph "Eighteenth" of the plaintiff's bill of complaint be, and the same is, entirely eliminated and striken therefrom without prejudice; and thereupon the defendants, by their counsel, moved the court to amend their answer herein by entirely eliminating and striking therefrom Paragraph "Eighteenth" of said answer (responsive to said "Eighteenth" Paragraph of the bill), and the plaintiff not resisting the said motion of defendants, and the court being of opinion to grant the same; it is therefore adjudged, ordered and decreed that the said motion of the defendants be granted and that Paragraph "Eighteenth" of their answer be, and the same is, entirely eliminated and stricken therefrom, without prejudice.

Thereupon further came the plaintiff, by its counsel, and replied generally to the answer of the defendants heretofore filed herein.

[fol. 92] Thereupon the plaintiff and the defendants, by their respective counsel, tendered to the court their stipulation in writing, duly signed by the plaintiff, by its counsel of record, and duly signed by the defendants, and by Howard B. Lee, the Attorney General of West Virginia, and by the Assistant Attorneys General, and by counsel for the State Tax Commissioner, and by special counsel of record for said defendants herein, together with all of the exhibits listed in and made part thereof and tendered with said stipulation of facts, and said parties plaintiff and defendant moved the court that said stipulation of facts and all exhibits therewith be filed herein as part of the record hereof, in lieu of the formal taking of evidence herein, and be taken, treated, read and considered by the court herein the same, and with the same effect, as though the facts therein set forth were fully established and proven by competent evidence adduced in the regular way.

And the court having inspected the said stipulation of facts and the exhibits therewith and having considered said motion and being of opinion to grant the same, it is, therefore adjudged, ordered and decreed that the aforesaid motion of the parties hereto be, and the same is granted and said stipulation of facts and exhibits therewith are now filed and made part of the record hereof, to be taken, treated, read and considered by the court, upon the hearing

hereof and in any and all appeals or appellate proceedings in any court or courts wherein such proceedings are had [fol. 93] or prosecuted, the same, and with the same effect, as though the facts therein set forth were fully established and proven by competent evidence adduced in the regular way. The said stipulation is marked for identification "Stipulation of Facts entered into between the plaintiff and the defendants herein, in lieu of the formal taking of evidence." Each of the thirty-four exhibits filed with the said stipulation are marked for identification as shown upon each thereof and upon the tabulated list of said exhibits, part of said stipulation.

(Endorsed: Enter: Morgan Owen, Judge. Entered in Chancery Order Book March 16, 1926. No. 6, Page 298.

In Court of Common Pleas of Kanawaha County

Submission of Cause

This day came the parties hereto, by their respective counsel, and thereupon this cause came on to be heard upon the plaintiff's bill of complaint (as amended) and the exhibits therewith; upon process to answer said bill of complaint duly accepted by counsel for and on behalf of each of said defendants; upon all proceedings taken and had at rules; upon the demurrer and joint answer (as amended) of the defendants heretofore filed herein, and upon the gen- [fol. 94] eral replication of the plaintiff to the said answer; upon the stipulation of facts and all exhibits therewith entered into between the plaintiff and the defendants, regularly filed and made part of the record of this cause, to be taken, treated, read and considered by the court upon the hearing hereof and in any and all appeals or appellate proceedings in any court or courts wherein such proceedings are had or prosecuted, the same and with the same effect as though the facts therein set forth were fully established and proven by competent evidence adduced in the regular way; upon all proceedings heretofore had herein, both at rules and in term, and upon all papers heretofore filed herein, and upon plaintiff's motion heretofore made for an

injunction in accordance with the prayer of its bill of complaint; and upon the argument of counsel; and this cause is now submitted to the court for final decision upon the record thereof, and of its judgment the court takes time to consider.

(Endorsed: Enter: Morgan Owen, Judge. Entered in Chancery Order Book March 16, 1926. No. 6, Page 299.

End of Part I (pages 1 to 94, inclusive.)
Wm. B. Mathews, Clerk.

[fols. 95-99] [File endorsement omitted.]

[fol. 100] In Common Pleas Court of Kanawha County

[Title omitted]

Stipulation of Facts Entered Into Between the Plaintiff and the Defendants Herein in Lieu of the Formal Taking of Evidence—Filed March 16, 1926

It is stipulated and agreed by and between the parties that for all the purposes of this suit (including proof and testimony) the following are facts, and shall be so taken, treated, read and considered, the same, and with the same effect, as though fully established and proven by competent evidence adduced in the regular way, that is to say:

It is agreed between the parties to this suit that the statements of fact contained in paragraphs Second, Third, Fourth, Fifth, Seventh, Eighth, Ninth, Eleventh, Twelfth, [fol. 101] Thirteenth, Fourteenth, Fifteenth, Nineteenth, Twentieth, Twenty-First, Twenty-Second and Twenty-Third of Plaintiff's bill shall be taken, treated and considered as true. But as to conclusion of law contained therein or in corresponding paragraphs of the answer of Defendants, this stipulation does not apply.

It is agreed by counsel for the respective parties that the meaning, construction and interpretation of the terms "transport" or "transportation," or any derivatives thereof, when and wherever used and referred to in this stipulation or any of its exhibits or papers referred to

therein are not agreed upon by said counsel: On the other hand it is hereby agreed and stipulated that the meaning of said terms, or any derivatives thereof as applied to the facts shall be, and is left open for determination by the Court on the hearing of the cause. The Plaintiff uses said terms in the same sense in which these terms were used in the exhibit filed herewith as part hereof, marked Exhibit—"Stipulation U. F. G. Co."

It is understood and agreed as to said "Exhibit U. F. G. Co." that same contains excerpts from the answer, brief and stipulation, and that said exhibit does not purport to set the same forth in full; further, that as an introduction to the stipulation referred to in said exhibit, it was expressed that the facts therein agreed to were for the purposes of that suit.

As to paragraph First, of Plaintiff's bill, it is stipulated as follows: That the Hope Natural Gas Company is a corporation organized and existing under the laws of the State of West Virginia and has its principal office and place of [fol. 102] business in the State of West Virginia, at Clarksburg, Harrison County. That its chief business is now and always has been the production and purchase in West Virginia of natural gas and that it transports and delivers the same, by means of pipe lines from the places of production and purchase of the major portion of such gas, through and across the State, for sale and delivery at the State line for further, continuous and uninterrupted transportation into the Commonwealth of Pennsylvania and the State of Ohio, for consumption and use in the cities and towns and other communities of those states. The remainder of such gas, a very much smaller portion, so produced and purchased in West Virginia, some of it after being transported through portions of the same system of pipe lines of the Plaintiff, is all distributed and sold to consumers in West Virginia or used by the company in its own operations.

It is stipulated in connection with paragraph "Sixth" of the Bill that the Defendant Grant P. Hall, State Tax Commissioner, has promulgated and delivered to this Plaintiff, certain forms, rules and regulations placing his construction upon said act, copies of which are herewith filed as part hereof.

As to the Tenth paragraph, it is stipulated that the first paragraph thereof shall be taken, treated and considered

as true; that the beneficial owners of the larger companies which had discovered, and were necessarily producing and unavoidably wasting much of the gas discovered in the drilling operations referred to in the said First paragraph, organized the Plaintiff, Hope Natural Gas Company, for [fol. 103] the purposes set forth in the charter issued to it by the State of West Virginia September 17, 1898, and the amendments thereof, in the form of new agreements between the stockholders, dated February 1, 1904 and September 11, 1916, the objects and purposes for which the plaintiff was incorporated as therein set forth being as follows:

Of September 17, 1898:

"For the purpose of producing, purchasing and acquiring natural gas, and of piping and transporting the same from the place or places where the same is produced, purchased or acquired to a point on a line between the States of West Virginia and Ohio on the Ohio River, about four miles below Moundsville, and there to sell and supply said gas to any other person or company desiring to purchase the same, and with the right to lay and maintain all lines of pipe, and to take, purchase, acquire and hold all such lands and leaseholders for oil and gas purposes and such other real and personal property as may be necessary or convenient for the purpose of producing, transporting, selling and supply natural gas."

Of February 1, 1904:

"For the drilling, boring, mining and operating for the production of natural gas; the producing, dealing in, buying and selling, acquiring, storing, transporting by pipes and otherwise natural gas for its own use and for the selling and supplying of natural gas for industrial, commer- [fol. 104] cial, domestic and other public and private uses for heat, light, fuel and power to persons, firms, partnerships, corporations and other consumers and purchasers for use in cities, towns, villages, districts and other municipalities and places in the State of West Virginia as well as elsewhere, where the said natural gas may be discovered, purchased, stored or transported by the said Hope Natural

Gas Company; for the erecting, laying, maintaining, operating, repairing and removing derricks, pipes, lines of pipes, connections and regulators, pump stations, buildings, shops, structures, tanks, pumps, compressors, gasometers, valves, gates, telegraph and telephone poles and lines and all other structures and appliances including street mains, pipes and conduits necessary, incident and convenient to the production, storage, piping and transporting and conveyance of natural gas and petroleum oil; for the producing, savings, storing, dealing in and selling petroleum oil and such other volatile substances as may be found in the drilling and mining for the production of natural gas. Also for the purchasing, leasing, acquiring, holding, owning, granting and conveying all such lands and leaseholds for oil and gas purposes and such other real and personal property including rights-of-way, as may be necessary and convenient for the purpose of producing transporting, selling and supplying natural gas and petroleum oil, and for the full and complete exercise and enjoyment of each and all of the powers and purposes herein-[fol. 105] before as well as hereinafter set forth and with the right and power, from time to time, to sell, lease, surrender and dispose of any or all of such real and personal property. Also to have, exercise and enjoy the right of eminent domain, and in the exercise of such right to take, condemn, use and enjoy such lands, rights-of-way, easements and property as shall be necessary to enable it to lay and construct its mains, pipes and conduits, pump stations, telegraph and telephone lines and other structures and appliances necessary and required for the transportation of natural gas; and also to have the right and power to subscribe for and purchase and acquire the stocks, bonds and securities of other companies, and to have the right and power to do all other acts, and to have and possess all other powers and privileges, necessary for the carrying out of the objects and purposes of this corporation, as above set forth."

Of September 11, 1916:

"Drilling, boring, digging, mining, and operating for petroleum oil, natural gas, coal, stone, clay and other min-

erals; producing, using, dealing in, buying, selling, refining, manufacturing, treating and preparing for market, petroleum oil and all of its parts, gases and by-products, natural gas and all of its parts, gases and by-products, coal and coke, and all of their parts, gases and by-products, and all other gases, natural and artificial, and stone, clay and all other minerals, and the products thereof.

[fol. 106] "Acquiring, storing, compressing and transporting natural gas and all other gases, by pipes, tanks, cars and other receptacles and means, for the corporation's own use and for selling and supplying the same for heat, light, fuel, flame and power, to domestic, industrial and other public and private uses, and for use and resale by other persons, firms and corporations; distributing and transporting through pipes natural gas for public and private use in municipalities, villages, districts and other places in the State of West Virginia, as well as elsewhere, and manufacturing artificial gases and transporting and distributing the same by means of pipe lines for public and private use in municipalities, villages, districts and other places in the State of West Virginia as well as elsewhere.

"Building and manufacturing, dealing and trading in any and all implements, appliances, tools, machinery, structures, stations, pipes and pipe lines, tanks, loading stations, materials and supplies, used in or incidental to the foregoing operations and purposes, and the carrying on of any other incidental business (whether mining, manufacturing, transporting, constructing or otherwise) which may be conveniently conducted for itself or for others in conjunction with any of the said business of the corporation.

"Applying for and acquiring patents, licenses, trademarks, processes, formulas, and the like, and the holding, using, vending and development of the same.

"Acquiring by purchase, subscription or otherwise, and [fol. 107] holding, selling, pledging, or otherwise disposing of, bonds of the United States or of any of them, or of any other country or of any subdivision of State government, and of any shares of the capital stock or bonds, and other securities or evidences of indebtedness of any other corporation or association of the State of West Virginia

or of any other state or territory, or any country, and exercising and possessing in respect thereof all the rights, powers and privileges of individual holders.

"Purchasing, leasing, acquiring, holding, owning, exchanging, developing and operating, granting and conveying, mortgaging, pledging or otherwise disposing of, real and personal property, petroleum oil, natural gas, coal, stone, clay and other minerals, mineral rights and privileges, easements, timber and timber rights, water and water rights, and rights of way, and other rights and privileges in lands and leaseholds.

"In addition to the purposes above enumerated, which are separate and independent objects of the corporation, it shall have the following incidental and supplemental powers and privileges:

"1. To have and exercise the right of eminent domain for the entry on lands for the purpose of examining and surveying a line for its tubing and pipes for the transportation of natural gas and for the appropriation of so much land as may be deemed necessary for the laying down of such tubing and pipe and for the rection of tanks and the [fol. 108] location of stations along such line and the erection of such buildings as may be necessary for the purpose aforesaid; and for such other rights and purposes as may be lawful in connection with its natural gas business.

"2. To construct, maintain, make, purchase, lease and operate, derricks, pipes, lines of pipes, connections, regulators, compressing and cooling stations, naptha saving plants, buildings, shops, offices, structures, tanks, pumps, compressors, tools, machinery, gasometers, holders, valves, gates, telegraph and telephone poles and lines, mills, factories, store and warehouses, oil works and refineries, plants for the production of electric light, heat and power, furnaces, ovens, merchandise stores, roads, tramroads, switches, trolley, gasoline and steam haulways, docks, piers, wharves, rolling stock, steamers, steam boats, tugs, water and steam pipes, tanks and reservoirs, and works of all kinds in connection with or useful for the business of the corporation as above specified.

"3. To guarantee the payment of dividends on any shares of the capital stock of, or the performance of any

contract by any other corporation or association in which this corporation has an interest, and to endorse or otherwise guarantee the payment of principal and interest or either, of any bonds, securities or other evidences of indebtedness of any such other corporation or association; subject, however, to the laws of the State of West Virginia in such case made and provided.

"4. To carry out all or any part of the foregoing objects [fol. 109] as principal, factor, agent or contractor or otherwise, either alone or in conjunction with any person, firm, association or other corporation, and in any part of the world.

"5. To have and possess all other powers and privileges incident, conducive or necessary to the attainment or carrying out of the objects and purposes heretofore enumerated, together with all other powers and privileges now granted or which may hereafter be granted by the laws of the State of West Virginia to corporations of this nature.

"It is provided, however, that nothing in this certificate contained shall authorize the corporation to engage in the business of a railroad company, a public telegraph, telephone or pipe line company, electric light, heat or power company, water company or water power company, a canal company or turnpike company, or a carrier by rail or water."

It is stipulated in connection with paragraphs Sixteen and Seventeen of Plaintiff's bill of complaint that Plaintiff is the owner of the oil and gas leases, compressing stations and pipe line system hereinafter described: that its produced gas and purchased gas is commingled and marketed through the same pipe line system. That more than 80% of the volume of gas so produced and purchased, is transported through said system of pipe lines and compressing stations, in continuous and uninterrupted transit into the States of Ohio and Pennsylvania. That it derives from the [fol. 110] sale of its gas so transported into adjoining states more than 82 per cent. of its gross revenue. While it is true the words "transport" or "transportation" may not be used in all of the contracts under which the gas is delivered at State line points of delivery, nevertheless, the gas is delivered at such points in the manner hereinafter

described and the parties to each of said contracts understood and agreed at the time such contracts were entered into that the gas would be delivered in such manner.

There are a number of gas wells in the counties adjoining to and some are near to the points of State line delivery. None of the gas from such wells is delivered under natural pressure into the trunk lines leading to points of State line delivery, but must be pumped and compressed for delivery into the trunk line system of pipe lines of plaintiff. The connections at the compressing stations and the pipe lines discharging therefrom determine the point to which the product of such wells is marketed.

The prices paid by the purchasers for natural gas at the State line pursuant to the contracts in the Bill and this Stipulation mentioned, are the prices for the natural gas produced, or purchased, or both, by plaintiff in the several counties in West Virginia wherein it operates, and delivered by it to such purchasers at the State line at the pressure stated in said contracts.

It is stipulated in connection with paragraph Twenty-Four that the taxes assessed against Plaintiff for the tax year 1925, corresponding to those described therein for the [fol. 111] tax year, 1924, have been paid and are as follows:

(a) Property tax	$670,718 62
(b) Corporation license tax (on capital stock year ending June 30, 1925)	5,440 00
(c) Public Service Commission assessment	5,062 50
(d) Gross Sales Tax to June 30, 1925	22,513 27
(e) Corporation Tax—Parkersburg	10 50
(f) Franchise Tax—City of Parkersburg	7,542 77
Total .	$711,287 66

The said sum of $595,594.09, mentioned in sub-section (a) of paragraph Twenty-Fourth of the Bill was paid by the Plaintiff to the Auditor of the State of West Virginia, and of this sum the said Auditor disbursed for exclusively State purposes, under the direction of proper officers of the State the sum of $47,774.92, the residue thereof being paid by him in accordance with law to the different political subdivisions in which the Plaintiff's property is situate upon the basis of the levies made in said sub-divisions; the rate

of levy for State purposes for the year 1924 being 14 cents on the $100.00 valuation.

The said sum of $670,718.62 mentioned in subsection (a) of paragraph Twenty-Fourth of the Bill, was paid by the Plaintiff to the Auditor of the State of West Virginia, and of this sum the said Auditor disbursed for exclusively State purposes, under the direction of proper officers of the State, the sum of $51,187.50, the residue thereof being paid by him in accordance with law to the different political sub-
[fol. 112] divisions in which the Plaintiff's property is situate upon the basis of the levies made in said sub-divisions; the rate of levy for State purposes for the year 1925 being 14 cents on the $100.00 valuation.

That a true copy of the Tax Act in question in this suit is here made a part of the Bill herein and this Stipulation marked for identification "Tax Act." That the taxes imposed by such Tax Act are made additional to all other licenses and taxes lawfully imposed by the laws of the State of West Virginia. That the Plaintiff, being a corporation organized and existing under the laws of the State of West Virginia, and being under the State law a public service company and engaged partly in the public service of supplying natural gas to consumers in West Virginia, has been required to pay annually, and will continue to be required to pay on and after July 1, 1925, the effective date of said Tax Act, the taxes imposed under the general taxing system of the State of West Virginia as set out in sub-paragraphs (a), (b), (c) and (d) of the Twenty-Fourth paragraph of the bill. That none of the foregoing tax laws under which said taxes have been levied and assessed against Plaintiff, and paid by it, have been amended or repealed and all remain in full force and effect, except Chapter 110 of the Acts of 1921, which Act is repealed with proviso that it shall remain in full force and effect for the assessment and collection of all taxes and penalties which have accrued, or may accrue in relation to any taxes levied thereunder up to and including June 30, 1925.

It is admitted that Plaintiff has the pipe lines, and com-
[fol. 113] pressing station system described fully in another connection, which it uses for receiving and transmitting the gas as fast as it is produced from Plaintiff's wells or is delivered to said pipe lines on purchase of the

gas from the wells or pipe lines of other producers and all moving for immediate delivery to Plaintiff's customers in the different places in the State and at the State lines. Such pipe lines are not used for storing gas produced or purchased by it in the sense of thus keeping and having the same to accumulate for the purpose of supplying its existing customers and purchasers, or customers and purchasers yet to be secured and provided, and that such storage as occurs is only that incidental to the presence of the gas in the pipe lines while in movement to delivery points. This stipulation is with respect to paragraph Twenty-Seventh of said Bill of Complaint.

It is admitted and agreed that the Plaintiff, as a public service company, has the right under the laws of the State of West Virginia, to condemn private property needed by it for rights-of-way in extending its pipe lines and that it has and does acquire property by condemnation when necessary. That Plaintiff does not transmit through its pipe lines natural gas except such as it purchases or produces and that it does not carry and never has transmitted or transported natural gas for others as a common carrier.

It is stipulated in connection with paragraph Thirty-Five of the Bill of Complaint that if the Plaintiff should pay the taxes in controversy under the Act in question, and such tax is determined in this suit to be an illegal tax, that the Plaintiff cannot maintain an action at law or suit in equity against the State of West Virginia for the recovery [fol. 114] thereof, in other words, that by provision of the Constitution of said State, it cannot be made a defendant in such action or suit. That Grant P. Hall, State Tax Commissioner, is not financially able to refund such taxes and that judgment therefor against him would not be of sufficient value to secure such refund if payment thereof is dependent upon collection thereof out of the properties belonging to him.

That any taxes which may be paid under the Act, the validity of which is challenged in this proceeding, could not be refunded to the party paying same, should said Act be held invalid, unless the Legislature of West Virginia should hereafter pass an act providing therefor and making appropriation for that purpose, unless the following provisions in the General Appropriations Act,

passed by the Legislature of W st Virginia on the 26th day of April, 1925, in effect from passage, makes such provision:

"Sec. 6 * * * For refunding moneys erroneously paid into the Treasury such sums are hereby appropriated as may be erroneously so paid, payable out of the same fund into which paid."

"Sec. 100. For refunding overpayments made into the Treasury on account of taxes, licenses, fines and commissions to be paid out of the fund into which they were paid, such an amount as may be necessary for such purposes is hereby appropriated."

The State of West Virginia neither has nor claims any proprietary rights in the oil and gas within its borders. By its grant, or by that of its predecessor in sovereignty, [fol. 115] the State of Virginia, the title to all of such oil and gas passed to private ownership more than fifty years ago.

Most of the oil and gas operations in West Virginia are conducted under and by virtue of what is commonly known as oil and gas leases. These leases have a well defined legal status and meaning and, while they are similar in essentials, they very as to unimportant features. A copy of such lease as is now in use by Plaintiff is filed herewith as part hereof, marked Exhibit "Lease."

The property which passes from the lessor to the lessee under and by virtue of an oil and gas lease in West Virginia is termed and treated by said State for the purpose of taxation and otherwise as a chattel real. By statute of said State, chattels real are made subjects of taxation at their true and actual value as other property.

Oil and gas adhere to the real estate and are parts thereof until brought to the surface, when they become personalty just as tree or stones, coal or fire clay—are parts of the realty until severed, when they become personalty. Oil and gas are capable of ownership either with or separate and apart from the land under which they exist; before development they are valued, assessed and taxed by the State of West Virginia as real estate; after they are developed and reduced to actual possession they are valued,

assessed and taxed by the State of West Virginia in the following manner:

(a) As to the fee simple interest of the lessor, the stipulated yearly gas well royalty per well provided for in said [fol. 116] oil and gas leases is capitalized and such capitalized value is then assessed and the taxes paid thereon by the lessor.

(b) As to the leasehold or working interest of the lessee, where such lessee is not a public utility, the gross proceeds derived from the oil and gas produced by said well is capitalized and such capitalized value is then assessed against such leasee and the taxes paid thereon by him.

(c) Section 84 of Chapter 29 of the Code as amended by Chapter 43 of the Acts of the Legislature of 1925, and Section 88 of the Code require the plaintiff and all other public utilities to make a return to the Board of Public Works of all of its property, both real and personal, including any rights which they may have in oil or gas in any lands, whether such rights are owned by them in fee or held under the usual oil and gas lease, together with the value of such property. And Section 93 of said Chapter 29 requires the said Board of Public Works to ascertain, assess and fix the true and actual value of all property of the Plaintiff and such other public utitlites from said reports and from all the evidence and information it may be able to procure as provided by law, for the purpose of taxation, including all of the gas rights of such public utilities, whether owned in fee or held under such leases, and that, pursuant to the requirement aforesaid, this Plaintiff has been making such return for each year, including the year 1925, upon forms furnished to it by said Board of Public [fol. 117] Works for the purpose, showing the value of all of its property by separate items, including the value of each separate gas right whether owned in fee or under leases held by it, listed by counties and magisterial districts, the character of interest therein, the number of acres thereof and the same information in regard thereto that is required in making up the real and personal property books by the assessors in the several counties in the State. And the said Board of Public Works has assessed and fixed as

the true and actual value of all of said property, so returned by the Plaintiff as aforesaid, the sum of $37,500,000.00 for the purpose of taxation for the year 1925, and has distributed the same among the several political sub-divisions of the State in which said property is situated, and taxes have been levied upon the same at the rates of levy prescribed and fixed by such several sub-divisions, in the aggregate sum of $670,718.62, and the same has been paid by the Plaintiff to the State of West Virginia as required by law.

The form upon which all public utilities such as plaintiff are required to make a return of their property for taxation to the Board of Public Works for the State of West Virginia is filed herewith as part hereof, marked Exhibit "Form of Return."

That the gas purchase contracts mentioned in plaintiff's bill of complaint, between the East Ohio Gas Company and plaintiff, pursuant to the terms of which gas has been, and is now being, sold by plaintiff and delivered by it to [fol. 118] said East Ohio Gas Company at the State line between the States of West Virginia and Ohio, provide as follows: Date of the contract is March 1st, 1910.

Second. The Hope Company undertakes and agrees during the continuance of this contract to sell and deliver to the Ohio Company and the Ohio Company undertakes and agrees to purchase and take from the Hope Company—

(a) All the natural gas requisite for the supply of the domestic consumers of the Ohio Company.

(b) Such amounts of natural gas as may be requisite to fulfill contracts made with the consent and approval of the Hope Company by the Ohio Company, or companies which it supplies with natural gas, for the sale of gas upon special terms and conditions for manufacturing purposes; provided, however, that the Hope Company shall not be obligated to sell and deliver or the Ohio Company to purchase and take gas in excess of the amounts currently required for the purposes aforesaid, or in excess of the amount which can be transported through the trunk lines of the Ohio Company as at present constructed under a pressure of 225 pounds at the Ohio River and that the Hope Company can-

not be required to deliver gas in excess of the amount which it has available for delivery as defined in the Seventh Paragraph hereof. * * *

Third. It is mutually understood and agreed that the natural gas to be sold and delivered hereunder shall be delivered by the Hope Company to the Ohio Company at the [fol. 119] boundary line between the State of Ohio and the State of West Virginia at the points where the lines of the Hope Company now connect with the trunk lines of the Ohio Company, or at such other points as may be mutually agreed upon between the parties hereto. * * *

Fifth. The Hope Company undertakes and agrees subject to the provisions of Paragraph Seventh hereof that at all times during the continuance of this contract it will maintain in good order and condition all its compressing stations, pipe lines, connections and other facilities in the State of West Virginia in order to enable it to carry out its obligations under this contract, and to deliver gas hereunder in such volume as to maintain a pressure equivalent to 225 pounds at the junction point of its lines with the lines of the Ohio Company as at present constructed and operated at the Ohio River; and will use due and reasonable diligence in developing its gas leases and properties in the State of West Virginia and in obtaining gas therefrom for the purpose of fulfilling its obligations hereunder, and will, if and when required so to do by the Ohio Company, deliver the gas to be supplied by it hereunder at a pressure equivalent to 225 pounds at the Ohio River end of the trunk lines of the Ohio Company as at present constructed. * * *

Seventh. It is further understood and agreed between the parties hereto that this contract shall continue, unless previously terminated by mutual consent of the parties hereto, so long as the Hope Company produces gas in marketable [fol. 120] quantities from the gas fields owned or leased by it in West Virginia * * *.

Ninth. The Ohio Company undertakes and agrees at all times during the continuance of this contract that the trunk lines from the Ohio River to the City of Cleveland and all

branches therefrom and the various distributing systems connected therewith will be kept in good order and condition so as to reduce, as far as possible, the waste and escape of gas, and that all gas supplied by it to domestic consumers or for manufacturing purposes shall be measured by a standard meter which it will install and keep in good order and condition, and that all gas supplied to consumers by companies to which it sells gas shall be measured by similar meters, which, together with all other pipe and appliances of such companies, the Ohio Company agrees shall be kept in good order and repair; that all of said meters used for measuring gas sold for domestic purposes shall be read at least once in each calendar month and that meters used for measuring gas sold for manufacturing purposes pursuant to the provisions hereof, shall be read daily and that reports of the readings of all meters shall be furnished monthly to the Hope Company. The amount of gas sold for lighting streets where measurement by meter is impracticable, shall be estimated monthly as accurately as practicable, and the amount of such monthly estimates and the basis upon which each of said estimates is made shall be reported monthly to the Hope Company.

[fol. 121] Tenth. The Ohio Company further undertakes and agrees that the Hope Company shall at all times through its agents and representatives have access to all meters used by the Ohio Company or by companies to which it sells gas to measure the amount of gas sold to consumers, whether for domestic purposes or for manufacturing purposes, and to all pipes, appliances and apparatus used by such com-anies in transporting, distributing and delivering gas, with the right to require the Ohio Company to examine, test and repair such meters, pipes and apparatus, on the refusal, delay or failure of the Ohio Company so to do, the Hope Company, by its duly authorized agents and employees, shall have access to such meters, pipes, appliances and apparatus, with the right to examine, test, repair and replace the same (in workmanlike manner as it would its own meters and appliances) but at the cost of the Ohio Company; the Hope Company by its properly accredited representatives shall also at all times have the right to examine the books of account of the

Ohio Company and of each of the companies to which the Ohio Company supplies natural gas, so far as said books of account in any way relate to the purchase or distribution of natural gas.

Fifteenth. The Ohio Company undertakes and agrees that it will pay to the Hope Company for natural gas sold and delivered to it by the Hope Company hereunder as follows:

(a) For all natural gas sold and delivered to the Ohio Company to enable it to meet the requirements of its [fol. 122] domestic consumers and the domestic consumers of companies which it supplies with gas, fifty per cent of the amounts payable by such consumers therefor, provided, however, that the minimum amount to be received by the Hope Company for each One Thousand cubic feet of natural gas supplied by it for domestic consumers shall not be less than as follows, to-wit:

From March 1st, 1910, to May 31st, 1918, inclusive, 15 cents.

From June 1st, 1918, to May 31st, 1920, inclusive 17½ cents.

From and after June 1st, 1920, for each successive period of five years, a price not less than 110 per cent of the highest price received by the Hope Company in the last preceding period of 5 years.

(b) For all natural gas sold and delivered to the Ohio Company to enable the Ohio Company, or companies which it supplies with gas, to fulfill contracts made with the consent of the Hope Company for the sale of gas for manufacturing purposes, sixty per cent of the amounts payable therefor by the manufacturers or other consumers by whom same is purchased.

Eighteenth. The Ohio Company undertakes and agrees that on or before the 25th day of each month it will furnish to the Hope Company a detailed statement of the amount of gas charged to its domestic consumers during the preceding month, showing separately the amount so supplied in each city and town supplied by it either directly or through distributing companies; and the rates at which gas is sold in each of said cities and towns; the number of

domestic consumers in each of said cities and towns; the [fol. 123] amounts charged during the preceding month to each consumer using gas for manufacturing purposes; whether any gas has been obtained from other sources; and if so the amount of gas obtained from the Hope Company and the amount of gas obtained from other sources determined as hereinbefore provided; and all such other data as the Hope Company may reasonably require or as may be necessary to enable the Hope Company to determine the amount which it is entitled to receive for gas supplied by the Hope Company to the Ohio Company and charged to consumers during the preceding month. The Ohio Company undertakes and agrees that it will pay in semi-monthly installments the amount due to the Hope Company for all gas delivered by the Hope Company to the Ohio Company during the preceding month; the first installment shall be paid on or before the 15th of the month and shall be 75 per cent of the total amount due for the month, approximated as fairly as may be at the time by the Ohio Company; the second installment or balance shall be paid in full on the 27th day of the month; the Ohio Company also agrees that the amounts of gas charged to consumers during each month shall be true statements of the amounts actually delivered to consumers determined as is provided in Paragraph Ninth hereof.

Twentieth. The Ohio Company covenants to use diligent effort to maintain and keep up its deliveries of natural gas under the spirit and intention of this agreement in order that the natural gas which the Hope Company is prepared to deliver hereunder may find a continuous market.
[fol. 124] That by agreement in writing dated April 30th, 1924, between Hope Natural Gas Company, first party thereto, and The East Ohio Gas Company, an Ohio corporation, the second party thereto, the Fifteenth and Sixteenth paragraphs of the said contract dated March 1st, 1910, were modified to read as follows:

"Fifteenth. The Ohio Company undertakes and agrees that it will pay to the Hope Company for natural gas sold and delivered to it by the Hope Company for the year beginning June 1, 1924 and ending May 31, 1925, the sum of thirty-five cents (35¢) per thousand cubic feet; for the

year beginning June 1, 1925, and ending May 31, 1926, the sum of thirty-seven and a half cents (37½¢) per thousand cubic feet; for the year beginning June 1, 1926 and ending May 31, 1927, the sum of forty cents (40¢) per thousand cubic feet, and for the year beginning June 1, 1927 and ending May 31, 1928, the sum of forty cents (40¢) per thousand cubic feet.

"The price to be received after said last named date to be then adjusted upon a like equitable basis, having reference to the then existing condition of the producing fields, available supply of gas and cost of producing same."

Sixteenth. It is understood that the Ohio Company, in addition to the gas purchased by it from the Hope Company, itself produces large quantities of gas and also purchases large quantities from others than the Hope Company, all of which gas is commingled for deliverey to con-[fol. 125] sumers on the Ohio Company's lines, and that the quantity of gas actually delivered by the Ohio Company to the consumers by reason of leakage and otherwise is normally less than the aggregate quantity of gas delivered into its lines from all sources.

It is agreed, in order to determine the quantity for which the Hope Company shall ultimately be paid that the gas obtained from the Hope Company shall be measured before such commingling takes place, by Pitot tubes or other accurate devices of standard registered type as may be agreed upon, to be installed and maintained at the expense of the Hope Company as nearly as possible at the junction of the lines of the Hope Company with the lines of the Ohio Company but on the West Virginia side of the Ohio River.

The gas produced by the Ohio Company and that purchased from other sources than the Hope Company shall be measured at the expense of the Ohio Company before such commingling takes place in a manner satisfactory to the Hope Company.

Provisional payments shall be made to the Hope Company from month to month in the same manner as at present, that is to say, the amount of gas produced and purchased by the Ohio Company from others than the Hope Company, as measured before commingling, shall be deducted from the amount of gas actually sold and delivered

by the Ohio Company to its customers during the month, and the Hope Company be paid for the balance.

At the end of each year a final adjustment for the year shall be made so that the Hope Company shall ultimately receive pay for such percentage or proportion of the gas [fol. 126] actually delivered during the year by the East Ohio Gas Company to its consumers as the measurements of gas delivered by Hope Company, taken before commingling, bear to the aggregate measurements of gas produced and purchased by the Ohio Company from all sources before such commingling, and final settlement for the year be made upon that basis. The year shall be taken as ending on May 31st, and final settlement for the year shall be made within thirty days thereafter.

That the gas purchase contracts mentioned in plaintiff's bill of complaint between the Peoples Natural Gas Company and plaintiff, pursuant to the terms of which gas has been, and is now being, sold by plaintiff and delivered by it to said Peoples Natural Gas Company at the state line between the States of West Virginia and Pennsylvania, provide as follows: Date of the contract is May 1st, 1911.

Second. The Hope Company undertakes and agrees during the continuance of this contract to sell and deliver to the Peoples Company, and the Peoples Company undertakes and agrees to purchase and take from the Hope Company:

(a) All the natural gas requisite for the supply of the consumers of the Peoples Company paying domestic rates and for the supply of the consumers paying domestic rates of distributing companies supplied with natural gas by the Peoples Company:

(b) Such amounts of natural gas as may be requisite to fulfill contracts made with the consent and approval of the [fol. 127] Hope Company by the Peoples Company or companies which it supplies with natural gas, for the sale of gas at special rates for manufacturing and special purposes, after the Peoples Company has first sold and delivered from gas wells owned or controlled by it, the amounts of natural gas which it is entitled to market therefrom as set forth in the fourth paragraph thereof.

Sixth. The Peoples Company undertakes and agrees that it will pay to the Hope Company monthly for the natural gas delivered hereunder for consumers paying domestic rates, the following rates and prices for each one thousand cubic feet, viz:

From May 1st, 1911, to December 31st, 1916, inclusive, 15 cents;

From and after January 1st, 1917, a price each month equal to 55 per cent of the average price realized each month by the Peoples Company for natural gas sold to domestic consumers, provided, however, that the price paid to the Hope Company from and after May 1st, 1916, for each successive period of five years, shall not be less than 110 per cent of the highest price received by the Hope Company in the last preceding period of five years.

The Peoples Company undertakes and agrees that it will pay to the Hope Company monthly upon the basis of the measurements recorded by the said measuring devices for all gas sold and delivered for manufacturing or special consumers (who are buying gas from the Peoples Company under special contracts made with the approval of the Hope Company as herein set forth) a price for each one thousand cubic feet of gas equal to 65 per cent of the average price per thousand cubic feet charged from month to month by [fol. 128] the Peoples Company for gas sold to consumers other than consumers paying domestic rates. The amount of gas so sold to consumers other than to consumers paying domestic rates shall be ascertained each month by deducting the amounts deliverable hereunder for consumers paying domestic rates from the total registration of the said measuring devices.

Beginning with and during the time hereafter that the Peoples Company is unable to secure from its own gas properties and from the Hope Company a supply of natural gas sufficient for the requirements of the Peoples Company for all of the consumers paying domestic rates on distributing systems owned or supplied with natural gas by it, and the Peoples Company is compelled to and does supplement the supply with manufactured gas, the price thereafter to be paid to the Hope Company during the continuance of this contract shall be 25 cents per thousand cubic feet for

all natural gas delivered by the Hope Company to the Peoples Company as shown by the total registration of the measuring devices.

Provided, always, that in case any tax or assessment is hereafter imposed upon the natural gas for use in or export from the State of West Virginia, or on the sale or exportation from the State of West Virginia, of natural gas, or in any other manner so as to constitute in effect a charge upon the gas delivered hereunder, the amount of such tax or assessment or charge shall be borne by the Peoples Company in so far as it relates to or is apportionable to the natural gas deliverable hereunder; and in the event that the Hope Company is required to pay the same the amount [fol. 129] thereof shall be paid by the Peoples Company to the Hope Company in addition to the prices above stated.

The effect of which contract, as modified by a supplemental agreement between the parties thereto dated November 28, 1924, is that, the said Peoples Company undertakes and agrees that it will pay to said Hope Company monthly as follows for all natural gas deliverable hereunder:

For the year commencing June 1, 1924, and ending May 31, 1925, thirty-five (35¢) cents per thousand cubic feet.

For the year commencing June 1, 1925, and ending May 31, 1926, thirty-seven and one half (37½¢) cents per thousand cubic feet.

For the year commencing June 1, 1926, and ending May 31, 1927, forty (40¢) cents per thousand cubic feet, and

For the year commencing June 1, 1927, and ending May 31, 1928, forty (40¢) cents per thousand cubic feet.

Seventh. The natural gas to be sold and delivered hereunder shall be delivered by the Hope Company to the Peoples Company at the boundary line between the states of West Virginia and Pennsylvania, at the points where the lines of the Hope Company now connect with the lines of the Peoples Company, or at such other points as may be mutually agreed upon. The points of delivery at the date hereof are as follows: at the State line about one-half mile north of Bula, West Virginia, where a 10-inch line and a 16-inch line of the Hope Company deliver into a 10-inch line and a 16-inch line of the Peoples Company and the gas

[fol. 130] is measured by Pitot tubes at Bula; at the State Line about — miles north of Glover, West Virginia, where a 16-inch line of the Hope Company delivers into a 16-inch line of the Peoples Company and gas is measured by Pitot tubes at Glover; Eldersville Station, where a 6-inch line of the Hope Company delivers into a 6-inch line of the Peoples Company and the gas is measured by meter; Eddy Station where a 3-inch line of the Hope Company delivers into a 16-inch line of the Peoples Company and the gas is measured by meter; and Fordyce Station, where a 6-inch line of the Hope Company delivers into a 16-inch line of the Peoples Company and the gas is measured by meter * * *.

Eighth. The gas deliverable hereunder shall be measured at the location of the present Pitot tube and meter measuring stations or at such other location as may hereafter be agreed upon as near the points of delivery of the gas as such locations may be secured. The Pitot tube stations at Glover and Bula, near the State line between the States of Pennsylvania and West Virginia, are hereby adopted as permanent delivery stations where the gas deliverable hereunder shall be measured by Pitot tubes of standard registering type, or by any other measuring devices which may be substituted by subsequent agreement of the parties. The expense of erecting, maintaining and operating all stations from time to time shall be borne equally by the parties hereto and the stations shall be under their joint control, with the right to each company to keep an employe or employes there for the purpose of checking the gas measurements. The measuring tubes in the Pitot tube stations shall be read at 15 minute intervals throughout each day of 24 hours, and duplicate statements of the daily readings shall [fol. 131] be mailed daily to each party; when meters are used the Hope Company shall read the meters daily or as often as the meters require but each party shall have constant access to the meters. The amount of gas delivered and so measured shall be computed upon said readings on a basis of 10 ounces to the square inch above 14.4 pounds atmospheric pressure, according to Boyle's law for the measurement of gas at varying pressures, without correction for temperature or barometric conditions, and such computations shall be and are hereby adopted as the basis of the

measurements and payments for the gas delivered hereunder.

Tenth. The Peoples Company, undertakes and agrees that on or before the 15th day of each month, it will furnish to the Hope Company a statement of the amount of gas registered by the meters of consumers paying domestic rates during the preceding month, which statement shall show as nearly as practicable the amount of gas delivered by the Peoples Company, and other companies to which it may supply gas, to consumers paying domestic rates; the said statement shall also include the amount of gas delivered by the Peoples Company, and by companies supplied by it with gas, during the preceding month, to consumers for manufacturing and other special purposes, and the rates and prices at which all gas is sold. The Peoples Company shall also add such other data as the Hope Company may reasonably require, or as may be necessary to enable the Hope Company to determine the amount of money which it is entitled to receive for gas supplied by the Hope Company to the Peoples Company. The Hope Company undertakes and agrees that on or before the 25th day [fol. 132] of the month it will furnish to the Peoples Company a detailed statement of the amount of gas delivered by it during the preceding month as measured by the Pitot tube and meter stations at the State line where gas is deliverable hereunder.

Eleventh. The Peoples Company undertakes and agrees that it will pay in semi-monthly installments the amount due the Hope Company for all gas delivered by the Hope Company to the Peoples Company during the preceding month; the first installment shall be 75 per cent. of the total amount due for the month and shall be approximated by the Hope Company upon the basis of the measurements at the points of delivery at the State line; the second installment or balance shall be paid in full on the 30th day of the month.

Twelfth. It is understood and agreed that the Hope Company is obligated to deliver gas hereunder at the points and in the amounts stipulated for herein, and that the Hope Company will use all reasonable diligence in developing and extending its gas leases and properties in the State of

West Virginia and in obtaining gas therefrom for the purpose of fulfilling its obligations hereunder, and that it will use all reasonable diligence to drill wells and to construct the necessary pipe lines and to maintain its pipe lines and wells in good order and condition to supply the gas which it has herein undertaken to deliver.

Fifteenth. The Peoples Company further undertakes and agrees that the Hope Company shall at all times through its properly authorized representatives have the [fol. 133] right to examine the books of accounts of the Peoples Company and of each of the companies to which the Peoples Company supplies gas, so far as said books of accounts in any way relate to the purchase or distribution of gas.

Twenty-first. This contract shall continue, unless previously terminated by mutual consent of the parties hereto, so long as the Hope Company produces gas in marketable quantities from the gas fields leased or owned by it in West Virginia.

That the gas purchase contracts mentioned in the plaintiff's bill of complaint between the Manufacturers Light and Heat Company (described as "Manufacturers Company") and plaintiff (described as "Hope Company"), pursuant to the terms of which gas has been, and is now being, sold by plaintiff and delivered by it to said Manufacturers Light and Heat Company at Morgan Measuring Station in Marion County, at Schutte Compressor Station (also called Bates), in Doddridge County, and at Centerville Compressor Station (also called Smith) in Tyler County, West Virginia, which contract is dated May 1, 1910, provide as follows:

Witnesseth, The Hope Company owns or holds under leases extensive tracts of gas producing territory in the State of West Virginia, and owns pipe lines for the transportation of gas from the wells or points where same is received from other producers to various points, and is engaged in the business of producing natural gas and purchasing the same from other producers and selling and delivering the same to companies engaged in the business of distributing natural gas, and also, through its distribut- [fol. 134] ing systems in the State of West Virginia, to

domestic consumers, manufacturers and other consumers of natural gas in that State, and

Whereas, the Hope Company is desirous of extending its natural gas business and its markets for the sale of natural gas, and

Whereas, the Manufacturers Company, and the companies which it controls, own systems for the distribution and sale of natural gas in the following cities and towns: Pittsburgh, Allegheny, Washington, Coraopolis, Bellevue, Sewickley, Rochester, New Brighton, Beaver, New Castle, Clairton, East Liverpool, Wellsburg, Steubenville, Bellaire, Knoxville, Wheeling, New Martinsville, Carnegie, McDonald, and in a large number of other cities and towns in the States of West Virginia, Ohio and Pennsylvania, and

Whereas, the Manufacturers Company and the companies which it controls require for the supply of the domestic consumers and other consumers upon the various distributing systems which said companies own, a large and regular supply of natural gas; wherefore said parties agreed:

First. From May 1st, 1911, until the expiration of this contract, the Hope Company will sell and deliver to the Manufacturers Company, and the Manufacturers Company will purchase and take from the Hope Company in each year an amount of natural gas at least equal to the amount of natural gas deemed requisite to supply during such year the domestic consumers upon the distributing systems now owned by the Manufacturers Company and the companies which it controls.

[fol. 135] Third. The gas deliverable hereunder shall be delivered by the Hope Company and taken by the Manufacturers Company at measuring stations to be located at Sedalia, Doddridge County, West Virginia, and at Morgan, Marion County, West Virginia, and at or near Iuka, Tyler County, West Virginia, and at such other points as may from time to time be agreed upon between the parties hereto; * * *

The amount of gas furnished and delivered hereunder at each point of delivery shall be determined as follows: Readings of the Pitot tubes and pressure gauges hereinafter provided for shall be made at regular fifteen-minute intervals throughout the twenty-four hours of each day, and duplicate statements of the readings shall be mailed

daily to the Hope Company and to the Manufacturers Company; from such readings of the measuring tubes the amount of natural gas furnished and delivered each month shall be computed on the basis of ten ounces pressure above atmospheric acording to Boyle's Law for the measurement of gas at varying pressures. This method of measurement is hereby adopted as the basis of measurement for the purposes of this contract, and payment for gas shall be made upon the monthly statements rendered by the Hope Company to the Manufacturers Company showing the total computation of gas so measured during the month.

Such gas shall be delivered by the Hope Company at the points of delivery at a pressure of at least 60 pounds.

The Pitot tubes for the measurement of the gas deliverable hereunder shall be of standard type. The Hope Company will erect or cause to be erected measuring station at [fol. 136] the points of delivery. All apparatus and equipment to be installed and operated in said stations, and the character and efficiency thereof shall be satisfactory to both parties hereto. One half the cost of erecting and equipping said stations shall be paid to the Hope Company by the Manufacturers Company.

Said stations, equipment and apparatus shall be operated jointly by both companies and the expense of operating and maintaining said stations after the same shall have been completed and equipped and in working order, and the expense of checking the operation and registration of the measuring apparatus shall be equally divided between the parties hereto.

Fifth. The Manufacturers Company, on or before the tenth day of each month during the continuance of this contract shall furnish to the Hope Company a statement showing the amount of gas supplied by the Manufacturers Company and by the companies which it controls, during the preceding month, to domestic consumers upon the systems now owned or controlled by said companies. Whenever practicable the amount of natural gas supplied to any such consumers shall be measured by meters of standard type.

All meters used for measuring gas delivered to domestic consumers shall be at all times open to the inspection of the representatives of the Hope Company, and all books and

records of the Manufacturers Company and of the companies which it controls, shall, likewise be open to the inspection of the representatives of the Hope Company at all reasonable times.

Sixth. The Manufacturers Company shall pay the Hope Company for all gas delivered hereunder as follows:

[fol. 137]

For all natural gas delivered from May 1st, 1910, to October 31st, 1910, inclusive	7½¢ per M cu. ft.
For all natural gas delivered from November 1st, 1910, to April 30th, 1911, inclusive	8¢ per M cu. ft.
For all natural gas delivered from May 1st, 1911, to April 30th, 1912, inclusive	9¢ per M cu. ft.
For all natural gas delivered from May 1st, 1912, to April 30, 1913, inclusive	10¢ per M cu. ft.
For all natural gas delivered from May 1st, 1913, to April 30th, 1914, inclusive	11¢ per M cu. ft.
For all natural gas delivered from May 1st, 1914, to April 30th, 1915, inclusive	12¢ per M cu. ft.
For all natural gas delivered from May 1st, 1915, to April 30th, 1916, inclusive	13¢ per M cu. ft.
For all natural gas delivered from May 1st, 1916, to April 30th, 1917, inclusive	14¢ per M cu. ft.

and for all natural gas delivered hereunder on and after May 1st, 1917, a price equal to fifty per cent (50%) of the average price realized by the Manufacturers Company and the companies which it controls, for natural gas sold to domestic consumers: Provided, however, that the price paid [fol. 138] to the Hope Company shall not be less than fifteen cents (15¢) per thousand cubic feet of gas delivered by the Hope Company to the Manufacturers Company; and provided, further, that in case any tax or assessment is hereafter imposed on natural gas for use in or export from the State, or on the sale or exportation from the State of natural gas, or in any other manner so as to constitute in effect a charge upon the gas delivered hereunder, the amount of such tax or assessment or charge shall be borne by the Manufacturers Company in so far as it affects or relates to or is apportionable to the natural gas deliverable here-

under; and in the event that the Hope Company is required to pay the same, the amount thereof shall be paid by the Manufacturers Company to the Hope Company in addition to the prices above stated; and provided further that in case at any time or times after April 30th, 1917, general conditions affecting the cost of producing natural gas have so changed that the cost of gas to the Hope Company is materially increased, or by reason of it being necessary for the Hope Company to obtain same from greater distances, the cost of obtaining and delivering the same is materially increased, the prices hereinabove specified to be paid to the Hope Company shall be correspondingly increased, and that if the parties hereto are unable to agree as to the proper amount of such increase, the question of the proper amount thereof shall be submitted to arbitration and the prices thereafter to be paid by the Manufacturers Company shall be the prices as fixed by such agreement or arbitration.

That, pursuant to the terms of said contract and by supplemental agreement between said Manufacturers Company and plaintiff it is provided that the Manufacturers [fol. 139] Company shall pay and the plaintiff shall receive for all gas delivered under said contracts a price equal to fifty-three per cent (53%) for the year commencing June 1, 1924, fifty-four per cent (54%) for the year commencing June 1, 1925, and fifty-five per cent (55%) for the year commencing June 1, 1926, of the average price realized by the Manufacturers Company and the companies which it controls, for natural gas sold to domestic consumers.

It is hereby stipulated by the plaintiff and defendants that the average price realized by the Manufacturers Company and the companies which it controls for said natural gas sold to domestic consumers was: For the year commencing June 1, 1924, 59.756 cents per thousand cubic feet, and that 53 per cent thereof, to-wit, 31.729 cents per thousand cubic feet, is the average price received by plaintiff from said Manufacturers Company for the gas sold and delivered to it during said period; for the five months commencing June 1, 1925, and ending October 31, 1925, 61.092 cents per thousand cubic feet, and that 54 per cent thereof, to-wit, 32.932 cents per thousand cubic feet, is the average price received by plaintiff from said Manufacturers Com-

pany for the gas sold and delivered to it during said five months period.

Eighth. The Manufacturers Company will use its best efforts to develop and extend the distribution and sale of natural gas to domestic consumers both on its own systems and on the systems of the companies which it controls, and to this end will make such solicitations and demonstrations as are reasonable and customary to induce the greater consumption of natural gas, and will introduce and furnish [fol. 140] such appliances for its uses on reasonable terms; and will at all times during the continuance of this contract use every endeavor to secure domestic consumers and to build up and extend the sale of gas for domestic purposes.

Ninth. At all times during the continuance of this contract, the transportation and distribution of natural gas by the Manufacturers Company, and its transportation and distributing system, and the transportation and distribution of natural gas by each of the controlled companies, and the transportation and distributing systems of each of such companies shall be in charge of an officer appointed by the Board of Directors and subject only to the Board.

Thirteenth. The Hope Company undertakes and agrees that at all times during the continuance of this contract it will use all reasonable diligence in developing and extending its gas leases and properties and in obtaining gas therefrom for the purpose of fulfilling its obligations hereunder, and that it will use all reasonable diligence to drill wells and maintain its pipe lines and wells in good order and condition to supply the gas which it has herein undertaken to deliver.

Fifteenth. The gas to be supplied by the Hope Company under this agreement shall be so supplied in the same condition as it leaves the wells except as to such changes as are incident to the usual processes of compression and pumping, or in the course of transportation.

Eighteenth. The Manufacturers Company during the continuance of this contract, shall at all times exercise dili- [fol. 141] gence to maintain its distributing system and the distributing systems of the companies owned and controlled

by it in good order and condition. The Hope Company will likewise exercise due diligence to maintain in good order and condition its pipe line system so far as necessary for the transportation of the natural gas which it is obligated to deliver hereunder.

Twenty-first. This contract, unless sooner terminated pursuant to the provisions herein contained or in consequence of the default of either party and the election of the other to treat it as abrogated, shall continue for twenty years from the date hereof.

That the gas purchase contracts mentioned in the plaintiff's bill of complaint, between the Fayette County Gas Company (described as "Second Party" or "Buying Company") and plaintiff (described as "First Party" or "Selling Company"), pursuant to the terms of which gas has been, and is now being sold by plaintiff and delivered by it to said Fayette County Gas Company at the state line between the States of West Virginia and Pennsylvania, provide as follows:

The contract is dated May 1, 1910.

Whereas the party of the second part is the owner of franchises or rights in and is supplying natural gas to the following cities and towns in the State of Pennsylvania, viz: Uniontown, Connellsville, Scottdale, Mt. Pleasant, Tarrs, Alverton, New Stanton, Hopewood, McClellantown, Masontown, Dawson, Vanderbilt and Youngwood, and owns and maintains a 12-inch pipe line to the State Line between the States of Pennsylvania and West Virginia, and

Whereas, the party of the first part is the owner of gas leases, properties, wells and pipe lines in the State of West [fol. 142] Virginia, with a 12-inch pipe line extending to and meeting the pipe line of the party of the second part at the said State Line, and

Whereas the party of the second part desires to buy from the party of the first part, and the party of the first part desires to furnish to the party of the second part the natural gas to be supplied to the consumers of the party of the second part in said cities and towns.

First. The Selling Company undertakes and agrees during the continuance of this contract, to sell and deliver to

the Buying Company, and the Buying Company undertakes and agrees to purchase and take from the Selling Company all of the natural gas required by the Buying Company for the supply of all of the consumers of the Buying Company, which it now has or may hereafter acquire, paying domestic rates in the cities, towns and villages now furnished with natural gas by the Buying Company.

Second. The 12-inch line of the party of the second part in the State of Pennsylvania meets and is joined to the 12-inch West Virginia line of the party of the first part at the State Line between the States of Pennsylvania and West Virginia, upon the lands of M. L. Core, situate along the boundary line of the District of Battelle, in Monongalia County, West Virginia, with the township of —— in Greene County, Pennsylvania. The junction point of the pipe lines of the parties hereto shall be known and designated for the purposes of this contract as Core Station, and at that point there shall be erected a Pitot tube measuring station for the purpose of measuring the gas sold and [fol. 143] delivered to the Buying Company hereunder; the said station shall be erected by the Selling Company, connected to the lines of each party and fully equipped, ready to be put into operation on the 1st day of May, 1910; the said Station shall thereafter be maintained and operated by the Selling Company, but the Buying Company shall have free access to the station at all times, with the right to employ men to read or check the readings of the Pitot tubes; the Buying Company shall reimburse the Selling Company for one half of the cost of erecting the station, and the cost of maintaining and operating the same from time to time shall be borne equally by the parties hereto. The reading of the Pitot tubes shall be under the joint control of the parties hereto, and shall be made at 15 minute intervals during each day of 24 hours; duplicate reports of the daily readings shall be mailed daily to each party.

Third. The Buying Company undertakes and agrees that it will pay to the Selling Company for the natural gas sold and delivered to it by the Selling Company, upon the basis of the measurements recorded by said Pitot tubes, calculated upon a pressure of 12 ounces to the square inch, according to Boyle's Law for the measurement of gas at varying pressures, the following rates and prizes, viz:

(a) For all gas sold and delivered from the 1st day of May, 1910, to and including the 30th day of April, 1920, that price from month to month for each 1,000 cubic feet of gas equal to 50 per centum of the average price per thousand cubic feet charged from month to month by the Buying Company to its domestic consumers.

Provided, always, that during the period from May 1st, [fol. 144] 1910, to and including April 30th, 1915, the price received by the Selling Company from the Buying Company shall at no time be less than 12½ cents for each 1,000 cubic feet; and that ruling the period from May 1st, 1915, to and including April 30th, 1920, the price received by the Selling Company from the Buying Company shall at no time be less than 14 cents for each 1,000 cubic feet of gas; and provided also that from the 1st day of May, 1910, to and including the 30th day of September, 1910, and from the 1st day of April, 1911, to and including the 30th day of September, 1911, for the gas sold by the Selling Company to be delivered by the Buying Company for mill use, but not exceeding 3,000,000 cubic feet per day under a contract now binding upon the Buying Company, the price to be paid the Selling Company for gas delivered to the mill shall be 75 per centum of the rate received by the Buying Company from the mill instead of the price above stipulated to be paid for all gas; but the price received by the Selling Company from the Buying Company for such mill gas, shall at no time be less than 7½ cents for each 1,000 cubic feet of gas. The gas so sold for mill use shall be accurately measured by the Buying Company by standard meters at a pressure not exceeding 8 ounces, and the amount of gas so measured, but not exceeding 3,000,000 cubic feet each day, shall be deducted monthly from the amount of gas registered by the Pitot tube station.

(b) For all gas sold and delivered on and after the 1st day of May, 1920, that price from month to month for each 1,000 cubic feet of gas, equal to 55 per centum of the average price per thousand cubic feet charged from month [fol. 145] to month by the Buying Company to its domestic consumers; Provided that the price received by the Selling Company from the Buying Company on and after the 1st day of May, 1920, shall at no time be less than 16½ cents for each 1,000 cubic feet of gas: Provided also that after

the 1st day of May, 1920, if the Selling Company in making diligent effort in its production of gas for its consumers, whoever and wherever they may be, is compelled to go farther afield with its pipe lines than the counties of Monongalia, Marion, Taylor, Harrison, Wetzel, Marshall, Tyler, Lewis, Upshur, Doddridge, Wirt, Pleasants, Wood, Ritchie, Calhoun, Gilmer, Braxton and Webster, or finds from other causes that the cost of producing its gas on the average throughout its field has materially increased, then the percentage last named shall be increased so as to yield to the Selling Company a larger price, in the same proportion that the cost of producing the gas has increased over the cost at the time of the making of this contract.

Fourth. The Buying Company agrees to pay to the Selling Company at its offices in Pittsburgh, Pennsylvania, on or before the 15th day of each month for all gas sold and delivered to it in the preceding month.

Seventh. The Selling Company undertakes and agrees that at all times during the continuance of this contract it will use all reasonable diligence in developing and extending its gas leases and properties and in obtaining gas therefrom for the purpose of fulfilling its obligations hereunder; and will use all reasonable diligence to provide and [fol. 146] maintain in good order and condition all such compressing stations, pipe lines and other facilities in the State of West Virginia to deliver the gas at said Core Station in volume and pressure to meet the requirements of the Buying Company.

Eleventh. This contract shall continue between the parties hereto for the term of Twenty (20) years from the date hereof, or as long thereafter as the Selling Company produces gas in marketable quantities from the counties named in the Third Section hereof.

That, pursuant to the terms of Clause (b), paragraph Third, of said contract, by supplemental agreements between said Selling Company and said Buying Company it is provided that said Buying Company shall pay and said Selling Company shall receive and accept the sum of thirty-one cents (31¢) per thousand cubic feet for all gas delivered or to be delivered under said contracts from the 1st day of July, 1924, to and including the 30th day of September, 1926.

That the gas purchase contracts mentioned in plaintiff's bill of complaint between the River Gas Company (described as Buying Company) and plaintiff (described as Selling Company) the original party to which agreement was Mountain State Gas Company, a corporation, but Hope Natural Gas Company has replaced, and has assumed and is performing the obligations of said Mountain State Gas Company thereunder, pursuant to the terms of which contract gas has been, and is now being, sold by plaintiff and delivered by it to said River Gas Company at the State Line [fol. 147] between the States of West Virginia and Ohio, provide as follows:

Date of the contract is April 1, 1910.

First. The Selling Company undertakes and agrees, during the continuance of this contract, to sell and deliver to the Buying Company, and the Buying Company undertakes and agrees to purchase and take from the Selling Company,

(a) All the natural gas required by the Buying Company for the supply of all of the consumers of the Buying Company paying domestic rates;

(b) Such amounts of natural gas as may be required by the Buying Company to fulfill its contracts made with the consent of the Selling Company for the sale of gas at special rates for manufacturing purposes;

Provided, however, that the Selling Company shall not be obligated to sell and deliver or the Buying Company to purchase and take gas in excess of the amounts currently required for the aforesaid purposes, or in excess of the amount which can be transported and delivered at a safe pressure through the pipe lines of the Selling Company now constructed from the gas fields of West Virginia to the Junction points with the lines of the Buying Company at the State Line between the States of West Virginia and Ohio. At the option of the Selling Company, however, it may increase the capacity of its lines to meet any increased requirements of the Buying Company.

Second. The natural gas to be sold and delivered hereunder shall be delivered by the Selling Company to the Buy-

ing Company at the boundary line between the States of [fol. 148] Ohio and West Virginia, where the lines of the Selling Company are now connected to the lines of the Buying Company.

Fourth. The Selling Company undertakes and agrees that at all times during the continuance of this contract it will use all reasonable diligence in developing and extending its gas leases and properties and in obtaining gas therefrom for the purpose of fulfilling its obligations hereunder; and will provide and maintain in good order and condition all such compressing stations, pipe lines and other facilities in the State of West Virginia to deliver the gas required by the Buying Company up to the capacity at a safe pressure of the pipe lines of the Selling Company now constructed to said delivery point.

Sixth. This contract shall continue between the parties hereto so long as the Selling Company produces gas in marketable quantities from gas fields owned or leased by it in West Virginia.

Eighth. The Buying Company undertakes and agrees at all times during the continuance of this contract to keep its lines from the Ohio River to the cities and towns supplied by it and all branches therefrom and the various distributing systems connected therewith, in good order and condition, so as to reduce, as far as possible, the waste and escape of gas, and that all gas supplied by it to domestic consumers of for manufacturing purposes shall be delivered at a pressure not to exceed eight ounces and measured by standard meters, which it will install and keep in good order and condition; that all of said meters used for measuring gas sold for domestic purposes shall be read [fol. 149] at least once in each calendar month, and that meters used for measuring gas sold for manufacturing purposes, pursuant to the provisions hereof, shall be read daily, and that reports of the readings of all meters shall be furnished monthly to the Selling Company. The measurement of gas sold for lighting streets and for other purposes where measurement by meters is impracticable shall be estimated monthly and the amount of such estimates reported to the Selling Company.

Ninth. The Buying Company further undertakes and agrees that the Selling Company shall at all times through its agents and representatives have access to all meters, pipe lines and appliances used throughout the plants of the Buying Company, either in selling or in buying gas, and shall have the right to have such meters examined and tested, and that the Selling Company by its properly accredited representatives shall, at all times, have the right to examine the books of account of the Buying Company so far as such books of account in any way relate to the purchase or distribution of natural gas.

Fourteenth. The Buying Company undertakes and agrees that it will pay to the Selling Company for natural gas sold and delivered to it by the Selling Company hereunder as follows:

(a) 66-2/3 per centum of the gross receipts of the Buying Company from its sales of natural gas to domestic consumers, provided always that during the period from April 1st, 1910, to and including March 31st, 1915, the price received by the Selling Company from the Buying Company [fol. 150] shall at no time be less than 12 cents for each one thousand cubic feet; and that during the period from April 1st, 1915, to and including the 31st day of March, 1920, the price received by the Selling Company from the Buying Company shall at no time be less than 14 cents for each one thousand cubic feet of gas; and that during the period from April 1st, 1920, to and including the 31st day of March, 1925, the price received by the Selling Company from the Buying Company shall at no time be less than 18 cents for each one thousand cubic feet of gas; and that for the period from and after April 1st, 1925, if the Selling Company in making diligent effort in its production of gas for its consumers, whoever and wherever they may be, finds that it is compelled to go farther afield with its pipe line, or finds from any cause that the cost of producing its gas on the average throughout its field has materially increased, then the price last named to be received by the Selling Company from the Buying Company shall be increased from year to year so as to yield to the Selling Company a larger price in the same proportion that the cost

of producing the gas has increased, or shall increase from year to year over the cost on the 1st of April, 1920. And if the parties hereto cannot agree upon the amount of such increased percentage, then the question of the amount of the increase in the rate, if any, shall be submitted to arbitrators, one to be chosen by each party and the two so chosen, if they cannot agree, to select an umpire; the award of any two of the arbitrators to be final and conclusive, and the cost of the award to be borne equally by the parties hereto.

(b) Seventy-five per centum of the gross receipts of [fol. 151] the Buying Company from its sales of natural gas for manufacturing purposes.

Provided that there shall be first deducted from the gross receipts of the Buying Company the amount of money received by it for gas produced from its own gas properties in the State of Ohio, or from gas secured by it to supplement the supply received during a shortage of the deliveries by the Selling Company, which deduction shall be based upon the lowest rate received for gas currently sold by the Buying Company to its consumers. It is provided, however, that the Selling Company may erect pitot tube or meter measuring stations on the West Virginia side of the Ohio River at any or all of the river crossings and connect the same to any or all of the pipes through which gas is sold to the Buying Company by the Selling Company in order to measure the gas so sold and there delivered, to ascertain the amount of leakage and unaccounted for gas occurring in the lines, meters and distributing plants of the Buying Company; if it has ascertained that such unaccounted for gas exceeds 2 per centum of the volume of gas sold and accounted for by the Buying Company, then the Buying Company shall pay to the Selling Company for all unaccounted for gas above 2 per centum of the gross volume of natural gas sold and accounted for by the Buying Company such payments to be made at the monthly periods herein set forth and at the average price received for the month to the Selling Company for all gas accounted for by the Buying Company. The gas shall be measured at said pitot tube or meter stations on a basis of eight ounces to the square inch according to Boyle's [fol. 152] Law for the measurement of gas at varying

pressures, and the cost of maintaining and operating the said pitot tube or meter stations, which shall primarily be under the control of the Selling Company during all the time that the said leakage exceeds said per centum, shall be borne by the parties hereto equally, and the Buying Company as well as the Selling Company, shall have full access to the stations at all times with the right to keep an employee or employees there for the purpose of checking the gas measurements.

That by supplemental agreement between Hope Natural Gas Company and River Gas Company the Fourteenth paragraph of the said contract dated April 1st, 1910, is modified so that the Buying Company undertakes and agrees that it will pay said Selling Company for all gas delivered by it to the Buying Company as follows: thirty-five cents (35c) per thousand cubic feet for all natural gas delivered by said Selling Company to said Buying Company under said contracts on and after the first day of May, 1923, and continuing until said price is changed in accordance with the terms of the said contracts; and it is further stipulated that the effective rate for all such gas now delivered is thirty-five cents (35c) per thousand cubic feet.

That plaintiff has a gas sales contract with Light, Fuel & Power Company of West Virginia, a corporation, under which plaintiff has been and is now selling and delivering gas at a delivery point in Braxton County, West Virginia, for distribution by said Light, Fuel & Power Company of West Virginia, in public service, to its domestic consumers in Braxton County, West Virginia, numbering about 1325 [fol. 153] consumers, at a price for each one thousand cubic feet of such gas equal to fifty per centum of the average price received therefor by the Buying Company from its domestic consumers. That the average price received by said Buying Company from its said domestic consumers, per thousand cubic feet, under rates prescribed by the Public Service Commission of West Virginia, are as follows:

For the calendar year 1923	34¢
For the calendar year 1924	34.24¢
For the ten months ending October 31, 1925	34.48¢

That plaintiff during the year ending December 31, 1924, sold natural gas to the Clarksburg Light & Heat Company, Clarksburg, Harrison County, West Virginia, for which it received 35.02 cents per thousand feet; and that the plaintiff acquired the physical properties of the Keener Oil, Natural Gas & Fuel Company in the fall of 1925, such physical properties being located at Weston, Lewis County, West Virginia, and the vicinity thereof, and that the plaintiff, before acquiring such physical properties of said company, sold natural gas to said company and received therefor the price of 38 cents per thousand feet; and that after acquiring such physical properties, the plaintiff has operated same and charges and receives from domestic consumers at Weston, Lewis County, West Virginia and vicinity, 52 cents per thousand cubic feet, less 2 cents per thousand cubic feet for discount. That the plaintiff distributes the gas locally at Troy, Gilmer County, and receives from the consumers thereof 52 cents per thousand cubic feet.

That the plaintiff during the year ending December 31, 1924, sold natural gas to the Clarksburg Light & Heat Com-
[fol. 154] pany for use by the consumers of the latter company at the city of Clarksburg, for which the plaintiff received 35.02 cents per thousand cubic feet; that this gas so furnished by plaintiff was emergency gas, furnished only during the winter months and during the coldest weather of the year, and out of the peak load which plaintiff was required to carry in order to supply its own consumers and consumers of other companies obtaining gas from plaintiff. That the plaintiff acquired the physical properties of Keener's Oil, Natural Gas & Fuel Company in the fall of 1925, such physical properties being located at the city of Weston, in Lewis County, and the vicinity thereof with approximately 1,805 domestic consumers; and that the plaintiff before acquiring such physical properties of said company sold natural gas to it and received therefor a price of 38 cents per thousand cubic feet; that as to such gas heretofore sold by the plaintiff to said company the same was emergency gas, furnished only during the winter months and during the coldest weather of the year, and out of the peak load which plaintiff was required to carry in order to supply its own consumers and consumers of other companies obtaining gas from plaintiff; that the said gas

plant of Keener's Oil, Natural Gas & Fuel Company by which it distributed gas at Weston and vicinity was an antiquated plant and wholly inadequate to satisfy the demands of the consumers on the lines of said plant, and that the plaintiff purchased said plant at the request of the gas consumers at Weston who petitioned the Public Service Commission of West Virginia to approve the net rate of 50 cents per thousand cubic feet; that said rate was allowed [fol. 155] by the Public Service Commission upon condition and only after the plaintiff had not only purchased said plant but had actually expended the sum of $92,829.00 of additional investment by way of additions, improvements and betterments to said plant. That plaintiff acquired said plant and not only expended said required sum for the purposes stated, but has expended all told $134,-145.00 by way of additions, improvements and betterments to said gas plant; and plaintiff has operated said plant and charges and receives for gas distributed thereby the said rate of 50 cents per thousand cubic feet net.

That plaintiff distributes gas locally at Troy, Gilmer County, and receives for such gas the net rate of 50 cents per thousand cubic feet. Said gas plant at Troy, which is a country village, with approximately 41 domestic gas consumers, was purchased by plaintiff in the year 1923, and it became necessary for plaintiff to make improvements and betterments in said plant, and such betterments were authorized by the Public Service Commission of West Virginia by order entered June —, 1923. The company owning said distributing plant at Troy had therefore obtained permission from the Public Service Commission to withdraw from furnishing said village with gas, and upon such withdrawal the plaintiff acquired said plant as aforesaid, at the request of the consumers in said village, who petitioned the Public Service Commission of West Virginia to approve said net rate of 50 cents per thousand cubic feet, which rate was thereupon approved by said Commission upon condition that said improvements and betterments be made by the plaintiff as aforesaid.

[fol. 156] Description and Method of Operation of Gas Transportation System

Hope Natural Gas Company is a West Virginia corporation, engaged in the business of producing, purchasing, selling, transporting and marketing natural gas. It began business in Marshall and Wetzel Counties in the year 1898. It then owned few gas wells and gas leases. It has expanded and extended its business in the State since that time to such an extent that, for the year ending June 30, 1925, it was the owner of 3,178 producing gas wells and of 860,750 acres of oil and gas leases, operated and unoperated, situated in twenty-five counties of the State. It not only produces natural gas from its own leases, but it also is the largest purchaser in the State of natural gas produced by others. For the year ending June 30, 1925, it produced and purchased in this State 48,651,658,000 cubic feet of natural gas, not taking into account the free gas delivered to its lessors, usually at the respective wells, or gas used by it in its operations, all of which aggregated approximately 2,000,000,000 cubic feet.

More than 80% of this gas was marketed out of the State. In order to transport the gas to market, Hope Natural Gas Company has built a transportation system which is used exclusively for that purpose. This system is composed of compressing stations and a net work of lines of steel pipe varying in diameter from 2 inches to 20 inches, and may well be divided into—(a) Gathering Lines, (b) Compressing Stations, and (c) Marketing or Trunk Lines.

The gathering lines vary in diameter from 2 inches to 6 [fol. 157] inches, depending upon the volume of gas to pass through them. They are connected with the casings in the various wells producing natural gas in the fields and vary in length from a few feet in some instances to several miles in others, and aggregate several thousand miles. They are usually buried beneath the surface of the land over which they pass, and are the feeders, so to speak, of the main transportation system.

The gathering lines constitute the first link or section of a system of transportation and delivery of natural gas reaching distant places and supplying large populations, chiefly without the State of West Virginia, with natural gas for municipal, industrial and domestic purposes.

They converge at central points in the gas fields or localities in the territory operated by the Company at which points of convergence they deliver their respective portions of the aggregate of natural gas into larger pipe lines, which are all interconnected and which are denominated the marketing or trunk line subdivision of the general transportation system.

Natural gas flows through a pipe line from that end of the pipe line at which the pressure is the greatest towards the end of the pipe line at which the pressure is the lowest, just as water flows from a higher to a lower level. On account of the friction in the lines, the uneven topography of the country over which they must of necessity pass and the various operating conditions encountered, gas will not flow of its initial pressure through gas lines in sufficient quantities to satisfy marketing requirements. To relieve against these line conditions, to accelerate and stimulate the flow of [fol. 158] gas from the wells and to compress it and give it additional impetus necessary to carry it through the marketing system of pipe lines, Hope Natural Gas Company has installed forty-two Compressing stations, distributed over the said twenty-five counties of the State, as the necessities of its business require, which compressing stations are capable of generating, in the aggregate, more than 68,570 horse power. These compressing stations take the gas from the gathering lines carrying varying line pressures running from zero to probably 50 pounds per square inch, and deliver it to the marketing or trunk lines under a pressure varying from 100 pounds to 325 pounds per square inch.

The compressing stations, located as aforesaid, are the second link or section in the transportation and marketing system referred to. By their operation they maintain a constant flow of natural gas under uniform pressure into the marketing lines of the Company. Without them, it would be a physical impossibility to deliver gas to the consumers and purchasers thereof in the quantity and under the pressure required by market conditions and by contracts entered into between the Company and purchasers of gas. All of the gas produced and purchased by Hope Natural Gas Company and marketed by it, except the small portion used in the field aforesaid, is compressed by a minimum of

one station. By far the larger part of all the gas marketed is compressed first by one station, and then again by a second station, in order to deliver it to market. A very large portion of the gas marketed is compressed in all by three stations handling the gas in a series one after the [fol. 159] other. None of the gas from its wells located in counties in West Virginia adjacent to the States of Ohio and Pennsylvania can be marketed directly into any line or lines leading to state line delivery points. All of the gas from said wells is pumped by compressing stations and delivered into the general transportation system of pipe lines at Hastings, Wright, Schultz or other compressing stations.

The same conditions of friction, &c., as described in the gathering lines exist, more or less, in the marketing or trunk lines. To overcome such conditions the gas is compressed and boosted along in the marketing or trunk lines by compressing stations wherever necessary.

The third and last link or section of said transportation system is the marketing or trunk lines. They vary in diameter from 8 inches to 20 inches. Of these there are approximately 1,292 miles. They extend from the points of connection with the gathering lines to the various places at which the gas is delivered in West Virginia and at the several State lines. They are so connected that gas which is produced or purchased in any county in West Virginia in which Hope Natural Gas Company operates, may reach any one of its markets.

The following is illustrative of the manner in which this transportation and marketing system, all working together, operates: The gathering lines in Boone County deliver gas into the trunk or marketing line at a point near Madison. The gas flows through a 16 inch line named line H-163 a distance of 24 miles to Jackson Compressing Station, in Kanawha County. At this point a number of gathering [fol. 160] lines deliver their gas, gathered from Kanawha, Clay, Lincoln and other counties, into this main line; the gas flows into this station under a line pressure varying from zero to 50 pounds and leaves the station under a pressure of 250 pounds to 300 pounds, depending upon the volume delivered. This extra impetus delivers it into line H-162 through which it is driven to Barren Creek Junction, in Clay County, at Cornwell Compressing Station, a dis-

tance of approximately 24 miles from Jackson Station. Here a number of gathering lines deliver gas into this same line from various communities and at which point the compressing station drives such gas ahead through Jones Station, in Gilmer County, to Hastings Station, a distance of approximately 76 miles, through the Counties of Kanawha, Roane, Calhoun, Gilmer, Ritchie, Doddridge, Tyler and Wetzel, via Lines H-162, H-155 and H-45. These lines so described are 20 inches in diameter and furnish a continuous conduit for the gas. The gas compressed at Jackson Station is not again compressed until it reaches Hastings, but at each compressing station from Jackson to Hastings and at other points along the main line, gas from gathering lines, collecting it from wells situate in many counties in the State, is pumped into this conduit. The line extending from near Jones Station, in Gilmer County, in a southerly direction across Kanawha County to near Madison, in Boone County, was completed in the fall of 1925. Cornwell and Jackson compressing stations and said new lines were put into operation about November 1, 1925. There was transmitted through said lines and stations during the month of November, 1925, 1,294,224,000 cubic feet of gas; [fol. 161] during December, 1925, 1,298,381,000 cubic feet of gas. Said Jones Station was completed in December, 1921, and put in operation about 1922, and has been in operation since.

The line so described is one of six lines delivering gas to Hastings Station and each of which delivers it in a similar manner to that just described, except that each obtains its gas from a different section of West Virginia. Three of these lines are 10, 12 and 16 inches in diameter, respectively, and two are 18 inches in diameter. They are lines H-5, H-6, H-7, H-13 and H-117. Their respective locations are shown upon the map hereafter filed.

The gas so delivered to Hastings Station leaves that station under a pressure of at least 300 pounds through five pipe lines named H-3-4-106-2 and H-8, varying in size from 8 inches to 20 inches, each extending to the State line between the States of Ohio and West Virginia, at or near to Clarington and Round Bottom, at which points it is delivered into similar connective trunk lines, to East Ohio Gas Company, and all gas so delivered flows in a continuous

and uninterrupted movement to the points of consumption in the State of Ohio without further compression.

All of the gas just traced from points or origin through the transportation system of plaintiff via Hastings Station to the State line between the States of Ohio and West Virginia, may be delivered in the following manner to Peoples Gas Company at Brave Station at or near the State line between the States of Pennsylvania and West Virginia.

When the gas reaches Jones Station in Gilmer County [fol. 162] through lines H-163 and H-162 leading from Jackson and Cornwell Stations, as heretofore described, it may be diverted from line H-162 into line H-138, which is approximately 40 miles long. It originates at said Jones Station and extends, through the Counties of Gilmer and Lewis, via Fink Station, to Stutler Junction in Harrison County. At Fink Station this line intersects Line H-45, a 20 inch line originating at Cedarville, in Gilmer County, the point at which deliveries of gas is made to plaintiff by United Fuel Gas Company, and extends via Line H-100 through Cove Lick Station in Lewis County to Fink Station, at which point its gas may be delivered to Hastings, as hereinbefore described, or turned into Line H-138 and delivered through Wright to Brave Station. At Stutler Junction Line H-138 forms a junction with two 18-inch lines. The one, Line H-5, leading from various compressing station and gathering lines in Harrison and Lewis Counties to Hastings Station; the other, Line H-150, originates at Stuler Junction and extends to Springer Junction, a distance of approximately 6 miles. The gas gathered by Line H-5 aforesaid may be diverted through Stutler Junction to either Hastings Station and thence to the State line on the Ohio River, or to Wright Station, and thence to the Pennsylvania State line at Brave Station aforesaid. From Springer Junction this conduit from Jones Station aforesaid is extended to Morrison Station in Harrison County through another 18 inch line known as Line H-141. Between Springer Junction and Morrison Station Line H-110, a 10 inch line, 4½ miles long, delivers its gas into this conduit. At Morrison Station Line H-141 is intersected by [fol. 163] Line H-7, an 18 inch line, leading from various pump stations and gathering lines in Harrison and Lewis Counties and extending as aforesaid to Hastings. But the

gas gathered from this line may readily be turned into Line H-141 at Morrison Station and be delivered at Wright Station. This continuous conduit is extended from Morrison Station to Wright Station, through Line H-17, which is a 16 inch line. At a point approximately 2 miles northeast of Morrison Station, Line H-28 originates and runs parallel with Line H-17 through Sardis and Peora Stations to Wright Station. At Wright and Peora Stations, respectively, Lines H-128 (a 10 inch line) and H-50 (a 10 inch line) from Gallagher and Bridgeport Stations, respectively, deliver gas into this conduit. Line H-13 (a 10 inch line) intersects Lines H-17 and H-28 at Wright and extends to Hastings. The gas so gathered by Line H-13 may be diverted through Wright Station to either Hastings Station and thence to the state line on the Ohio River, or to the Pennsylvania State line at either Brave or Wade Stations.

At the various compressing stations between Jackson Station and Wright Station and at various other points, numerous gathering lines deliver gas into this continuous conduit.

From Wright Station the gas is driven through Line H-17 to Brave Station where it is delivered by Hope Natural Gas Company to Peoples Gas Company. Hope Natural Gas Company delivers gas at Brave Station through Lines H-27 (a 10 inch line approximately 16 miles long) and H-29 (an 8 inch line approximately 5 miles long). All gas so deliv- [fol. 164] ered at Brave Station is delivered into similar connective trunk lines of Peoples Gas Company and flows in a continuous and uninterrupted movement to the place of consumption in the State of Pennsylvania without further compression. By reason of the interconnection of all of these marketing or trunk lines, Hope Natural Gas Company can deliver at Brave Station all of the gas it produces or purchases in any part of the State of West Virginia.

The gas sold to the Fayette County Gas Company comes out of the same system of interconnected pipe lines from which gas is delivered at Brave, Round Bottom, Clarington, Sistersville, Paden City, New Port Ohio, Marietta, Ohio, Belpre, Ohio and Parkersburg, West Virginia. The pipe line through which this gas is delivered intersects the general transportation system of Hope Natural Gas Company at Wright Station. The gas may be taken from gas in

the lines leading through Wright Station for delivery to Peoples Gas Company, or, through Line H-3 from Hastings from gas for delivery to East Ohio Gas Company. The gas for such delivery leaves Wright Station through Line H-39 (a 12-inch line, via Hawkins Compressing Station), where it is compressed and delivered to the Fayette County Gas Company through said line at Wade measuring station, at or near the State line between the States of Pennsylvania and West Virginia, into a similar connective trunk line. All gas so delivered flows in a continuous and uninterrupted movement to the point of consumption in the State of Pennsylvania without further compression. All of the gas produced or purchased in any part of the territory by Hope [fol. 165] Natural Gas Company may be delivered through this interconnected transportation system to the Fayette County Gas Company at Wade Station.

Hope Natural Gas Company delivers gas to the River Gas Company at the State line between the States of Ohio and West Virginia, at Belpre, Newport and Marietta, Ohio. The gas delivered to New Belpre and Marietta is delivered through Lines H-52 and H-51. The pipe line supplying gas to Newport extends from Shultz Station, in Pleasants County, via St. Marys, and is Line H-132. Lines H-51, H-52 and H-133 connect through Line H-55 directly with the main transportation system of Hope Natural Gas Company and, by reason of such interconnected system, the gas produced in any of the fields of operation of this Company, may be delivered through this pipe line system to the three State line delivery points described. Parkersburg obtains her supply of gas from this same line, H-52.

Trunk line H-55 (a 10 inch line) is approximately 48 miles in length. It originates at Schultz Station, in Pleasants County, and extends via Craig Station to Minnora, in Calhoun County, where a connection is made with Clayco Gas Company's 8 inch line leading through the Counties of Calhoun, Roane, Clay and Kanawha into Lincoln County. Line H-126 (a 10 inch line), originating at Jack Evans Compressing Station, in Roane County, extends to Cabot Station, in Calhoun County, a distance of approximately 17 miles. Line H-161 (an 8 inch line, approximately 5 miles long) extends from Cabot Station into the field to the

gathering lines, reaching into the Counties of Calhoun, Roane, Wirt and Wood, and thus delivers such gas into the [fol. 166] general trunk line system of pipe lines. From Cabot Station this gas may be delivered to (a) to Jones Station via Lines H-124 and H-137 (10 inch lines, approximately 11 miles long), and thence to Hastings, with other gas heretofore traced through Line H-45 (b) to Brave Station through Line H-138 and extensions, (c) to Wade Station from Wright Station through Line H-39 hereinbefore described, (d) to Hastings via Lines H-123 and H-156, two 12 inch lines, each approximately 12 miles long, through Burnt House Junction in Ritchie County, and thence via lines H-68 and H-154 (10 inches and 12 inches respectively) to Newberne Junction, intersecting at said Junction with main trunk Line H-45, (e) to Manufacturers Light & Heat Company, at Smith Station, in Tyler County, through Line H-57 from Newberne Junction, (f) Burnt House Junction through Line H-68 to Craig Station in Ritchie County, thence via Line H-55 through Schultz Station, and thence to River Gas Company and Parkersburg as hereinbefore shown. These western trunk lines of said transportation system of pipe lines of the plaintiff make direct connection with the central and eastern section of such system at Newberne Junction and Jones Station, respectively.

The gas sold and delivered to Manufacturers Light & Heat Company, after being compressed by plaintiff, is delivered under high pressure at three points, viz: At Smith Station, in Tyler County, through Line H-157; at Bates Station, in Doddridge County, through Lines H-42 and H-5; and at Morgan Station, in Marion County, through Lines H-17 and H-28. The gas so delivered is, in the main, trans- [fol. 167] ported by Manufacturers Light & Heat Company into the States of Pennsylvania and Ohio, where it is sold. Such gas is taken from the lines connected with the general transportation system of Hope Natural Gas Company. The gas produced or purchased in any part of the territory operated by Hope Natural Gas Company may be delivered through this interconnected transportation system to the three points of delivery.

This system of marketing or trunk lines extends across the western part of the State of West Virginia in a general

northeast and southwest direction. Many cross lines or interconnecting lines have been constructed so that this transportation system is a network of inter-connected pipe lines.

All of the gas which is furnished to the cities and towns in West Virginia by Hope Natural Gas Company is supplied from the general transportation System of the Company. Gas produced or purchased in any part of the territory operated by the Company may be delivered to any of such cities and towns through said transportation system of pipe lines.

The gas produced and purchased by Hope Natural Gas Company is received continuously at the various compressing stations hereinbefore referred to and in like manner it is compressed continuously to whatever pressure exists in the main transportation system hereinbefore described. It continues to flow in an uninterrupted and unbroken stream from the time it leaves the wells of the plaintiff, or reaches its gathering lines from the wells or lines of the producers from whom it purchases such gas until it is delivered to the final point of consumption either upon plaintiff's lines or the lines connected with its system.

[fol. 168] All of the gas purchased and produced by Hope Natural Gas Company so gathered by the gathering lines eventually reaches and enters the main transportation system hereinbefore described, except only that small portion which is used in the field for the Company's operations, for free gas consumers, or for sale to isolated consumers on its lines. All sales and deliveries of gas made to cities and towns in the State of West Virginia or at the State line of West Virginia, are made from the gas continually moving through the main transportation system of the company.

There is filed herewith as a part hereof a tabulation showing, by counties, as of December 31, 1925: (a) number of gas wells owned; (b) the operated acreage, meaning thereby the acreage of leases upon which one or more wells have been drilled; (c) the unoperated acreage, meaning thereby the acreage covered by leases upon which no wells have been drilled; (d) real estate owned, and (e) compressing stations, giving name and horse power of each, marked Exhibit "Tabulation No. 1."

There is filed herewith as a part hereof a tabulation descriptive of the trunk lines of the Company which shows by counties (a) the number assigned to each line; (b) its diameter; (c) length in feet; (d) approximate length in miles; (e) the point at which it begins, and (f) the point at which it ends, marked Exhibit "Tabulation No. 2."

There is filed herewith a map showing the trunk lines of Hope Natural Gas Company and the East Ohio Gas Company as they existed at the close of the year 1902, which [fol. 169] map is marked for identification Exhibit "Map 1902."

There is filed herewith as part hereof a map showing the trunk lines of Hope Natural Gas Company and of companies connecting at West Virginia State line with the lines of Hope Natural Gas Company as the same appeared at the close of the year 1908. These lines are indicated upon the map by green lines. Said map is marked for identification Exhibit "Map 1908."

There is filed herewith as part hereof a map showing the pipe lines of Hope Natural Gas Company and of companies connecting with its lines at West Virginia State line at the close of the year 1918. The lines added since 1908 are shown upon this map in red. For the purpose of identification, this map is marked Exhibit "Map 1918."

There is filed herewith as part hereof a map showing as of December 31, 1925, (a) the counties of West Virginia in which plaintiff operates, (b) the adjoining States of Pennsylvania and Ohio, (c) the marketing or trunk line system of pipe lines of plaintiff, their respective locations, numbers and interconnections, (d) the forty-two compressing stations, their respective locations and names, (e) the three points in West Virginia at which gas is delivered to Manufacturers Light & Heat Company and the lines of said Manufacturers Light & Heat Company through which said gas passes out of the State of West Virginia, (f) the points at the State line at which gas is delivered under State line contracts, (g) the points at which the plaintiff Company receives gas purchased from United Fuel Gas Company, [fol. 170] Clayco Gas Company, Pure Oil Company and Godfrey L. Cabot, Incorporated; which map is marked for identification Exhibit "Map 1925."

That, beginning about the year 1917, general conditions affecting the cost of producing natural gas did change and the cost to plaintiff of producing natural gas did materially increase, and it became necessary for it to obtain its gas supply at greater distances from its respective delivery points to said Buying Companies, and the cost of obtaining and delivering said gas has materially increased, and the current prices now being paid to and received by plaintiff for such gas are much higher per thousand cubic feet than the prices received by plaintiff for gas delivered to said Buying Companies between the years 1910 and 1917.

It is stipulated and agreed that during and after the World War—particularly after the entry of the United States of America therein, to wit: April, 1917—there was and has been a great and material increase in wages paid by the Plaintiff and a great and material increase in the cost of drilling and equipping wells, and in the cost of laying and maintaining pipe lines, constructing and operating compressing stations, and of all materials used by the Plaintiff in its business.

That, in compliance with the terms of the aforesaid respective gas sales contracts, plaintiff, during the nine months, beginning January 1, 1925, and ending September 30, 1925, sold and delivered out of gas produced or purchased by plaintiff, as set forth in its bill of complaint, to said respective Buying Companies, at the delivery points, [fol. 171] as to each Buying Company, hereinabove particularly specified at the respective contract prices hereinabove set forth, the volume in cubic feet of gas next hereinafter set forth, to wit:

To East Ohio Gas Company	23,562,914,000
To Manufacturers Light & Heat Company	7,089,811,000
To Fayette County Gas Company	651,105,000
To Peoples Natural Gas Company	572,080,000
To River Gas Company	220,095,000
To Light, Fuel & Power Company of West Virginia	129,697,000

It is further stipulated that Hope Natural Gas Company is a public service corporation and supplies natural gas for domestic and industrial use and consumption, within the

State of West Virginia, to approximately 22,325 consumers therein, under rates prescribed by the Public Service Commission of said State, and that the average price received by plaintiff for gas so delivered for the period beginning January 1, 1925, and ending October 31, 1925, was 30.457¢ per thousand cubic feet for 4,992,110,000 cubic feet of gas, produced within said State during said period and consumed therein as aforesaid.

It is stipulated between the parties hereto that there are approximately Four Hundred (400) persons, firms and corporations engaged in the State of West Virginia in the business or occupation of mining and producing for sale, profit or use, natural gas.

It is stipulated between the parties hereto that plaintiff has numerous gas purchase contracts for the purchase by it of natural gas mined and produced in the State of West Virginia, for sale, profit and use, with approximately [fol. 172] two hundred different persons, firms and corporations, designated as "Producers." That the customary form of such gas purchase contract is filed herewith as part hereof marked "Form of Gas Purchase Contract." That, in some instances, gas so purchased by plaintiff is delivered to it by the producer thereof at the well out of which the gas emerges from the gas producing sand, the producer not laying any pipe line to convey such gas from the well, but all necessary pipe lines being laid by plaintiff. That, in other instances, gas so purchased by plaintiff is delivered to it by the producer thereof at point or points of delivery in the vicinity of the wells out of which the gas emerges from the gas producing sand, the producer, in such latter instance, laying and maintaining such pipe line as is necessary to convey the gas from his well or wells to the point of junction between his line and the lines of plaintiff, at which latter point the plaintiff receives such gas.

That all such gas purchase contracts of plaintiff are in writing, have a designated number, are dated, name the vendor as the party mining and producing the gas sold, show the county in which the producer's wells are situated, designate the place where the producer is to deliver and the plaintiff is to receive such gas, and state the price per

thousand cubic feet to be paid by the plaintiff to the producer for all gas delivered under the contract. That all gas so purchased by plaintiff is measured by standard meters at the time and as it is received into plaintiff's pipe line system.

A schedule is filed herewith as part hereof, called "First Class," which contains a statement of gas purchased by plaintiff from producers in West Virginia, where the gas is [fol. 173] delivered to plaintiff at the mouth of the well or in the vicinity of the wells, for the nine months ending September 30, 1925. Under the column thereof, marked "County," is listed the same of the county in which the gas is produced. Under the column named "Number of agreements," is listed the number of separate gas purchase contracts by counties which plaintiff has and from which it is buying and receiving gas from wells situate in the counties so listed. The column named "Amount of Gas Purchased Nine Months Ending September 30, 1925," states in thousands of cubic feet the aggregate volume of gas so purchased by and delivered to plaintiff during said period, by counties, in accordance with the terms of said contracts. The column named "Maximum Price" contains a list showing the maximum or highest price paid by plaintiff to any producer and the highest price received by any producer for gas sold and delivered to plaintiff under such gas purchase contracts during said period. The column named "Minimum Price" contains a list showing the minimum or lowest price paid by plaintiff to any producer and the lowest price received by any producer for gas sold and delivered to plaintiff under such gas purchase contracts during said period.

It is stipulated between the parties hereto that plaintiff has several gas purchase contracts for the purchase by it of natural gas mined and produced in the State of West Virginia for sale, profit and use by several other persons, firms and corporations, designated as "Producers." Under these contracts natural gas is produced in several counties, in said State, by the respective producers, from wells which [fol. 174] are scattered, and the entire gas production for such wells is collected by the respective producers, by means of pipe lines, and conveyed from such wells to central de-

livery points and there delivered to plaintiff, the distance that such gas is conveyed, by such producer, from each of his wells, varying, but in each instance of this class, the producer has laid and maintains field lines and conveys the gas through the same from his wells to plaintiff's lines. In the case of gas purchased from United Fuel Gas Company all of such gas is conveyed a distance of at least 34 miles, and delivered by said producer to plaintiff at Cedarville, in Gilmer County, under a contract between United Fuel Gas Company and the plaintiff, bearing date in August, 1916, and supplemental contracts.

A schedule is filed herewith, pertaining to this second class purchase contracts, called "Second Class," which contains a statement, giving the name of the county in which the gas is produced, the date of the contract, the name of the producer who produces and sells such gas, and states in thousands of cubic feet the aggregate volume of gas so purchased by and delivered to plaintiff, under each of such contracts for the period from January 1, 1925, to September 30, 1925. On said schedule the column marked "Average Price" shows the average price paid by plaintiff to said respective producers for the gas delivered to plaintiff under said contracts during said period. The average price paid to the United Fuel Gas Company for such gas is subject to the explanation shown upon the said exhibit.

The said two schedules are filed herewith as parts hereof, [fol. 175] marked "Exhibit Schedule of Gas Purchase Contracts, First Class and Second Class."

It is further stipulated that the average price paid by plaintiff for all gas produced in West Virginia and purchased by and delivered to it during the nine months ending September 30, 1925, was 17.007 cents per thousand cubic feet for 19,588,045,000 cubic feet of natural gas.

It is further stipulated between the parties hereto that Pittsburgh & West Virginia Gas Company, a corporation, engaged in the business of producing, purchasing and transporting natural gas within the State of West Virginia for delivery to domestic and industrial consumers in said State, and also for delivery at the State line between the States of West Virginia and Pennsylvania, with connecting pipe

lines at said State line, for use and consumption outside the State of West Virginia, has approximately 141 gas purchase contracts with approximately the same number of separate persons, firms or corporations designated as producers, under the terms of which contracts gas is now being purchased by said Pittsburgh & West Virginia Gas Company, the gas being produced in West Virginia, and the gas is delivered by the respective producers to the said purchaser either at the mouth of the well or in the vicinity of the wells. A schedule of said gas purchase contracts similar to the schedule hereinabove filed, called "First Class," in respect to the gas purchase contracts of the plaintiff, is filed herewith as part hereof, marked Exhibit "Schedule Pittsburgh & West Virginia Gas Company Contracts." The said schedule shows the name of the county from which the gas is produced, the number of gas pur-[fol. 176] chase contracts or agreements as to each of said counties, the volume of gas in thousands of cubic feet delivered to the said purchaser under said contracts, by counties, for the nine months ending September 30, 1925, and the average price per county paid by the purchaser, under said contracts for such gas.

It is further stipulated that, for all gas delivered by said Pittsburgh & West Virginia Gas Company, at the said State line, since the first day of January, 1925, for consumption in the State of Pennsylvania, it received from the purchasers thereof the rate or price of thirty-seven (37c) cents per thousand cubic feet, and that said rate is the current rate for all gas now being delivered in like manner.

It is further stipulated between the parties hereto that United Fuel Gas Company, a corporation, engaged in the business of producing, purchasing and transporting natural gas within the State of West Virginia for delivery to domestic and industrial consumers in said State, and also transporting such gas out of the State of West Virginia and delivering the same in the State of Ohio to like consumers therein, for use and consumption outside the State of West Virginia, has approximately 68 gas purchase contracts with approximately the same number of persons, firms or corporations, designated as producers under the terms of which contracts gas is now being purchased by

said United Fuel Gas Company, the gas being produced in West Virginia and is delivered by the respective producers to said purchaser either at the mouth of the well or in the vicinity of the wells. A schedule of the said gas purchase contracts, similar to the schedule hereinabove filed, called "First Class," in respect to the gas purchase [fol. 177] contracts of the plaintiff, showing the name of the county in which the gas is produced, the number of gas purchase contracts or agreements as to each of said counties, the volume of gas in thousands of cubic feet delivered to the said purchaser under said contracts, by counties, for the nine months ending September 30, 1925, and the average price per county paid by the purchaser, under such contracts, for such gas is filed herewith as part hereof, marked Exhibit "Schedule United Fuel Gas Company Contracts."

It is further stipulated between the parties hereto that Manufacturers Light & Heat Company, a corporation, engaged in the business of producing, purchasing and transporting natural gas within the State of West Virginia for delivery to domestic and other consumers in said State, and also transporting much the larger part of its gas out of the State of West Virginia and delivering the same in the States of Ohio and Pennsylvania for use and consumption outside of the State of West Virginia, has approximately fifty-two gas purchase contracts with approximately the same number of different persons, firms or corporations, designated as producers, under the terms of which contracts gas is now being purchased by said Manufacture-s Light & Heat Company, such gas being produced in West Virginia and delivered by the respective producers to the said purchaser either at the mouth of the well or in the vicinity of the wells. A schedule of the said gas purchase contracts, similar to the schedule hereinabove filed, called "First Class," in respect to the gas purchase contracts of the plaintiff, showing the name of the county in which the [fol. 178] gas is produced, the number of gas purchase contracts or agreements as to each of the said counties, the volume of gas in thousands of cubic feet delivered to the said purchaser under said contracts by counties, for the nine months ending September 30, 1925, and the average price

per county paid by the purchaser, under such contracts, for such gas, is filed herewith as part hereof marked Exhibit "Schedule Manufacturers Light & Heat Company Contracts."

The United Fuel Gas Company, Columbia Gas & Electric Company, Pittsburgh & West Virginia Gas Company, Manufacturers Light & Heat Company, Reserve Gas Company, Carnegie Natural Gas Company, and the West Virginia Central Gas Company (and its affiliated companies), the larger of the Gas Companies, severally produce and purchase natural gas in West Virginia, the major portion of which is sold by them for use and consumption outside the State of West Virginia, and, severally own, maintain and operate a system of pipe lines in said State through which such natural gas is conveyed from the wells producing the same and from the junction places at which such purchased gas is received and deliver the major portion of all such natural gas at the several State lines between the State of West Virginia and the States of Kentucky, Ohio, Pennsylvania and Maryland for further transportation through the connecting lines of the purchasing or affiliated companies, in continuous and uninterrupted transit to consumers in said other states, in manner similar to the method of plaintiff (fully described in another part hereof), or such companies themselves have their own system of pipe lines extending out of the State of West Virginia and into the adjoining [fol. 179] States of Kentucky, Ohio, Pennsylvania and Maryland, through which lines they deliver their gas to purchasers and consumers for use and consumption in such other states. Each of said companies has a system of gathering lines, trunk lines, compressing stations and measuring stations by and through which its gas is transported to the respective points of delivery for consumption as aforesaid. The following is the approximate number of miles of pipe lines owned and operated by each of said companies within the State of West Virginia:

Name	Miles of pipe line
United Fuel Gas Company	1,500
Pittsburgh & West Virginia Gas Company	1,400
Manufacturers Light & Heat Company	900

Name	Miles of pipe line
Carnegie Natural Gas Company	600
Reserve Gas Company	600
West Virginia Central Gas Company and affiliated Companies	500
Columbia Gas & Electric Company	400

Of the natural gas produced in West Virginia and consumed outside said State, at least 99 per cent. thereof is transported and delivered at the points and in the manner hereinabove shown by plaintiff and the seven last named corporations. The gas produced by said companies is not metered nor has it ever been at the wells, but is received into their respective transportation systems and therein commingled with purchased gas and metered only at the point of delivery.

The United Fuel Gas Company delivers gas to Pittsburgh and West Virginia Gas Company, near Cedarville; to Co-
[fol. 180] lumbia Gas and Electric Company at a point in Wayne County.

Schedule of Natural Gas Production in West Virginia by Years

Year	Production, cubic feet
1908	112,181,278,000
1909	165,435,092,000
1910	190,705,869,000
1911	206,890,576,000
1912	239,006,682,000
1913	245,543,985,000
1914	236,489,175,000
1915	244,004,159,000
1916	299,318,907,000
1917	289,698,967,000
1918	280,289,044,000
1919	219,886,837,000
1920	221,266,699,000
1921	167,227,696,000
1922	184,677,589,000
1923	186,678,130,000
1924	178,438,585,000

[fol. 181] For the year ending December 31, 1921, the companies hereinafter named produced in West Virginia the number of cubic feet of natural gas and purchased from producers (not public utilities) of natural gas the number of cubic feet set opposite the names of the respective companies, to wit:

Name of company	Natural gas produced in West Virginia	Natural gas purchased from producers (non-utilities)
Hope Natural Gas Company	33,287,477,000	6,690,223,000
United Fuel Gas Company	32,514,072,000	8,119,090,000
Pittsburgh & West Virginia Gas Company	10,633,525,000	2,063,993,000
Columbia Gas & Electric Company	5,314,603,000	2,153,894,000
Manufacturers Light & Heat Company	3,066,127,000	2,683,496,000
Reserve Gas Company	13,340,769,000	321,085,000
Carnegie Natural Gas Company	6,192,591,000	86,361,000
Godfrey L. Cabot, Inc.	2,308,184,000	3,549,173,000
Huntington Development & Gas Company	943,123,000	3,549,572,000
West Virginia Central Gas Company	1,860,672,000	144,758,000

[fol. 182] For the year ending December 31, 1922, the companies hereinafter named produced in West Virginia the number of cubic feet of natural gas and purchased from producers (not public utilities) of natural gas the number of cubic feet set opposite the names of the respective companies, to wit:

Name of company	Natural gas produced in West Virginia	Natural gas purchased from producers (non-utilities)
Hope Natural Gas Company	33,414,035,000	8,837,746,000
United Fuel Gas Company	37,860,211,000	8,637,839,000
Pittsburgh & West Virginia Gas Company	16,280,058,000	3,538,634,000
Columbia Gas & Electric Company	4,801,421,000	2,211,106,000
Manufacturers Light & Heat Company	3,766,670,000	1,296,374,000
Reserve Gas Company	13,012,694,000	140,607,000
Carnegie Natural Gas Company	8,928,506,000	468,450,000
Godfrey L. Cabot, Inc.	2,544,883,000	2,834,615,000
Huntington Development & Gas Company	909,895,000	3,898,320,000
West Virginia Central Gas Company	1,744,648,000	488,702,000

[fol. 183] For the year ending December 31, 1923, the companies hereinafter named produced in West Virginia the number of cubic feet of natural gas and purchased from producers (not public utilities) of natural gas the number of cubic feet set opposite the names of the respective companies, to wit:

Name of company	Natural gas produced in West Virginia	Natural gas purchased from producers (non-utilities)
Hope Natural Gas Company	32,723,392,000	8,384,233,000
United Fuel Gas Company	36,458,316,000	8,377,418,000
Pittsburgh & West Virginia Gas Company	12,589,990,000	5,716,619,000
Columbia Gas & Electric Company	4,656,415,000	2,681,942,000
Manufacturers Light & Heat Company	4,295,254,000	1,105,676,000
Reserve Gas Company	12,298,470,000	133,142,000
Carnegie Natural Gas Company	9,443,763,000	1,063,461,000
Godfrey L. Cabot, Inc.	3,331,221,000	3,013,564,000
Huntington Development & Gas Company	444,381,000	4,620,700,000
West Virginia Central Gas Company	1,912,198,000	216,376,000

[fol. 184] For the year ending December 31, 1924, the companies hereinafter named produced in West Virginia the number of cubic feet of natural gas and purchased from producers (not public utilities) of natural gas the number of cubic feet set opposite the names of the respective companies, to wit:

Name of company	Natural gas produced in West Virginia	Natural gas purchased from producers (non-utilities)
Hope Natural Gas Company	29,117,494,000	8,695,153,000
United Fuel Gas Company	33,254,944,000	9,531,842,000
Pittsburgh & West Virginia Gas Company	9,546,871,000	4,338,274,000
Columbia Gas & Electric Company	4,633,457,000	4,775,308,000
Manufacturers Light & Heat Company	2,595,384,000	1,619,087,000
Reserve Gas Company	10,516,000,000	97,421,000
Carnegie Natural Gas Company	6,695,738,000	2,037,086,000
Godfrey L. Cabot, Inc.	2,772,023,000	2,536,684,000
Huntington Development & Gas Company	585,713,000	4,061,849,000
West Virginia Central Gas Company	1,745,291,000	445,058,000

It is further stipulated between the parties hereto that the Public Service Commission of West Virginia, in accordance with the laws of said State, published and transmitted to the Governor of West Virginia a report desig- [fol. 185] nated as "Ninth Annual Report Public Service Commission of West Virginia" for the year ending June 30, 1922, and that in said report there is a tabulation, collected by the Commission from the reports of the Public Service Corporations in said State, described as "Gas Utilities," which gives the average prices per thousand cubic feet paid for gas purchased by said gas utilities, under the jurisdiction of said Commission, for the year ending December 31, 1921, of gas produced in West Virginia

and purchased by said gas utilities from producers thereof not subject to the jurisdiction of said Commission, said tabulation giving the name of the purchasing company and the average price paid by it to such producers as follows:

Name of purchasing company	Average price per thousand cubic feet, in cents
Carnegie Natural Gas Company	10 20
Columbia Gas & Electric Company	6 47
Godfrey L. Cabot	6 00
Hope Natural Gas Company	11 09
Huntington Development & Gas Company	5 78
Manufacturers Light & Heat Company	12 15
Pittsburgh & West Virginia Gas Company	9 28
Reserve Gas Company	10 15
United Fuel Gas Company	4 59
West Virginia Central Gas Company	13 80

It is further stipulated between the parties hereto that the Public Service Commission of West Virginia, in accordance with the laws of said State published and transmitted [fol. 186] to the Governor of West Virginia a report designated as "Tenth Annual Report Public Service Commission of West Virginia" for the year ending June 30, 1923, and that in said report there is a tabulation, collected by the Commission from the reports of the Public Service Corporations in said State, described as "Gas Utilities," which gives the average prices per thousand cubic feet paid for gas purchased by said gas utilities, under the jurisdiction of said Commission, for the year ending December 31, 1922, of gas produced in West Virginia and purchased by said gas utilities from producers thereof not subject to the jurisdiction of said Commission, said tabulation giving the name of the purchasing company and the average price paid by it to such producers as follows:

Name of purchasing company	Average price per thousand cubic feet, in cents
Godfrey L. Cabot, Inc.	7 75
Carnegie Natural Gas Company	12 8
Columbia Gas & Electric Company	4
Hope Natural Gas Company	15 31
Huntington Development & Gas Company	6
Manufacturers Light & Heat Company	15 31
Pittsburgh & West Virginia Gas Company	11 87
Reserve Gas Company	9 66
West Virginia Central Gas Company	16 02

It is further stipulated between the parties hereto that the Public Service Commission of West Virginia, in ac- [fol. 187] cordance with the laws of said State, published and transmitted to the Governor of West Virginia a report designated as "Eleventh Annual Report Public Service Commission of West Virginia" for the year ending June 30, 1924, and that in said report there is a tabulation collected by the Commission from the reports of the Public Service Corporations in said State, described as "Gas Utilities," which gives the average prices per thousand cubic feet for gas purchased by said gas utilities, under the jurisdiction of said Commission, for the year ending December 31, 1923, of gas produced in West Virginia and purchased by said gas utilities from producers thereof not subject to the jurisdiction of said Commission, said tabulation giving the name of the purchasing company and the average price paid by it to such producers as follows:

Name of purchasing company	Average price per thousand cubic feet, in cents
Godfrey L. Cabot, Inc	8 70
Columbia Gas & Electric Company	7 50
Hope Natural Gas Company	13 15
Huntington Development & Gas Company	6 60
Manufacturers Light & Heat Company	16 32
Pittsburgh & West Virginia Gas Company	13 40
Reserve Gas Company	10 03
United Fuel Gas Company	5 02
West Virginia Central Gas Company	17 50

It is further stipulated between the parties hereto that the Public Service Commission of West Virginia, in accordance [fol. 188] with the laws of said State, published and transmitted to the Governor of West Virginia a report designated as "Twelfth Annual Report Public Service Commission of West Virginia" for the year ending June 30, 1925, and that in said report there is a tabulation, collected by the Commission from the reports of the Public Service Corporations in said State, described as "Gas Utilities," which gives the average prices per thousand cubic feet for gas purchased by said gas utilities, under the jurisdiction of said Commission, for the year ending December 31, 1924, of gas produced in West Virginia and purchased by said gas utilities from producers thereof not subject to the jurisdiction of said Commission, said tabulation giving the name of the purchasing company and the average price paid by it to such producers as follows:

Name of Purchasing Company	Average price per thousand cubic feet, in cents
Hope Natural Gas Company	14 59
Godfrey L. Cabot, Inc.	9
Huntington Development & Gas Company	8
Manufacturers Light & Heat Company	17 61
Pittsburgh & West Virginia Gas Company	12 60
Reserve Gas Company	10 43
United Fuel Gas Company	4 91
Columbia Gas & Electric Company	7

It is stipulated that the dates of the several gas purchase contracts, listed on Exhibit: "Schedule of Gas Purchase Contracts, First Class" of Plaintiff, range from the years [fol. 189] 1914 to 1925, with a few of such contracts dated between the years 1908 and 1914; that the dates of such contracts listed on Exhibit: "Schedule United Fuel Gas Company Contracts" range from the years 1916 to 1925, and it shall be assumed for the purposes of this suit, that the dates of such contracts listed on Exhibit: "Schedule Pittsburgh and West Virginia Gas Company Contracts," and Exhibit: "Schedule Manufacturers Light & Heat Company Contracts" range between the years 1916 to 1925.

Schedule of natural gas consumption within the State of West Virginia and percentage of State's total production by years in cubic feet:

Year	Cubic feet	Percentage of State's total production
1908	50,536,660,000	45%
1909	70,360,705,000	42%
1910	70,197,058,000	37%
1911	74,023,517,000	36%
1912	87,862,432,000	37%
1913	89,952,109,000	37%
1914	86,327,239,000	37%
1915	89,373,995,000	37%
1916	99,314,167,000	33%
1917	93,220,204,000	32%
1918	105,624,394,000	38%
1919	83,769,937,000	36%
1920	80,539,623,000	34%
1921	68,354,128,000	40%
1922	71,078,670,000	37%
1923	75,785,379,000	40%
1924	75,175,994,000	40%

[fol. 190] Schedule of consumption outside the State of West Virginia of natural gas produced within the said State, by years, in cubic feet, and percentage of such consumption to State's total production

Year	Cubic feet	Percentage of State's total production
1908	61,644,618,000	55%
1909	96,074,387,000	58%
1910	120,508,811,000	63%
1911	132,867,059,000	66%
1912	151,144,250,000	63%
1913	155,501,875,000	63%
1914	150,161,936,000	63%
1915	154,630,164,000	63%
1916	200,004,740,000	67%
1917	196,679,263,000	68%
1918	174,664,650,000	62%

Year	Cubic feet	Percentage of State's total production
1919	139,929,062,000	64%
1920	144,662,772,000	66%
1921	102,485,777,000	60%
1922	120,089,191,000	63%
1923	117,175,610,000	60%
1924	112,337,158,000	60%

Plaintiff files herewith as part of this stipulation, marked for identification Exhibit "Distribution of Plaintiff's Gas Sales" for the calendar year- 1921, 1922, 1923, 1924 and for nine months ending September 30, 1925. This statement shows the volume, in thousands of cubic feet, of plaintiff's gas consumed in West Virginia for each of said periods, and the volume in thousands of cubic feet of plaintiff's gas trans- [fol. 191] ported for consumption outside the State of West Virginia during said period, and in the latter instance shows the names of the purchasing companies and the volume purchased by each company during said periods. The distribution of such gas consumed in West Virginia is further classified by showing city plant's sales, sales to drillers and pumpers, volume of free gas furnished, limited consumers, volume sold to other utilities in West Virginia, volume sold to miscellaneous companies in West Virginia, and volume sold to Manufacturers Light and Heat Company for consumption within West Virginia. The said statement shows also the respective percentages, by said periods, of plaintiff's produced and purchased gas consumed within the State of West Virginia and plaintiff's produced and purchased gas consumed outside the State of West Virginia during said periods, as well as the average percentage of all plaintiff's gas consumed within the State of West Virginia during the entire said period of four years and nine months and the percentage of such gas consumed outside the State of West Virginia during the like period.

That the Act of the Legislature of West Virginia (Chapter 71, House Bill No. 59, of the Acts of the Legislature of West Virginia of the Regular Session, 1919), also called "Steptoe Law," mentioned in the Thirty-first Paragraph of plaintiff's bill of complaint, is filed herewith as part hereof

marked Exhibit "Steptoe Law," and the same is a true copy of said Act.

That, in causes heretofore pending in the Supreme Court of the United States, wherein the Commonwealth of Pennsylvania was the complainant and the State of West Virginia was the defendant, in one cause, and wherein the State [fol. 192] of Ohio was the complainant and the State of West Virginia was the defendant, in the other cause Docket Nos. 15 and 16, respectively, orginal jurisdiction, at the October Term, 1921, of said Court, by final decree entered therein on June 11, 1923, it was by the Supreme Court of the United States in respect to the aforesaid Steptoe Law, considered, ordered and decreed:

"1. That the Act passed by the Legislature of the defendant State February 10, 1919, which is set forth in the bills of complaint in these suits and known as Chapter 71 of the West Virginia Acts of 1919, is a void and inoperative enactment because it contravenes the limitations which the Constitution of the United States places upon state action in respect of commerce among the several States.

"2. That the defendant State, and her several officers, agents and servants, are hereby severally enjoined from enforcing, or attempting to enforce, that Act. * * *

"5. That the Clerk of this Court transmit to the Chief Magistrates of the Commonwealth of Pennsylvania and the States of Ohio and West Virginia copies of this decree duly authenticated under the seal of this Court."

That the opinion rendered by the Supreme Court of the United States in said Original Jurisdiction Causes is reported in Volume 263 United States Reports, pages 553 and 623, both including, and the aforesaid final decree in said causes is reported in the same Volume at pages 623 and 624 thereof and said opinion and decree as therein pub- [fol. 193] lished shall be considered as part of this stipulation with like force and effect as if the said opinion and decree were copied at length herein. An attested copy, under the seal of the Supreme Court of the United States and under the hands of the Clerk of said Court, of the said decree of the Supreme Court of the United States in said Original Jurisdiction Causes numbered 15 and 16, entered June 11, 1923, as well as a like attested copy of the decree

entered by said Court in said causes on December 3, 1923, whereby the opinion delivered and decree entered on June 11, 1923, is reaffirmed, are filed herewith as parts hereof, marked Exhibit "Decrees in Original Jurisdiction Causes."

It is stipulated between the parties hereto that the Act of the Legislature of West Virginia at the Extraordinary Session in the year 1919, known as Chapter No. 5, House Bill No. 3 of said Acts, mentioned in the 31st paragraph of the bill of complaint in this suit, together with the rules and regulations concerning said Act, issued by Walter S. Hallanan, then State Tax Commissioner of the State of West Virginia, as well as the form of return prescribed by said State Tax Commissioner under said Act and under said rules and regulations, is filed herewith as part hereof, marked Exhibit "Pipe Line Privilege Tax Return, Rules and Regulations and Law."

That by decree entered by the Circuit Court of Kanawha County, West Virginia, on the 8th day of September, 1920, in the chancery cause of the Eureka Pipe Line Company against Walter S. Hallanan, State Tax Commissioner et al., No. 5434, the aforesaid Privilege Tax Act was held unconstitutional and void as to said The Eureka Pipe Line [fol. 194] Company, its property, franchises and business; a certified copy of said decree, including the written opinion of the said Court, made part of said decree, is filed herewith as part hereof, marked Exhibit "Eureka Decree."

That said decree and the construction placed upon said act by said decree, as decided by the Supreme Court of West Virginia, was, later, reviewed by the Supreme Court of the United States, upon writ of error to the Supreme Court of West Virginia and the construction placed upon said Act by the Supreme Court of West Virginia, was by the Supreme Court of the United States, at the October Term, 1921, therof, in Docket No. 255, held to be erroneous; and a copy of the opinion of the Supreme Court of the United States, delivered by Mr. Justice Holmes, as reported in 257 U. S. Reports, page 265, is filed herewith as part hereof, marked Exhibit "Opinion by Mr. Justice Holmes." The application of said Act to the said business of The Eureka Pipe Line Company involved in said suit, was upon a second writ of error, considered by the Supreme Court of the United States at the October Term, 1922, thereof in Dockets Num-

bered 569 and 885, and said Act was further applied as per the written opinion of Mr. Chief Justice Taft, as reported in 261 U. S. Supreme Court Reports, at page 393; a copy of which opinion is filed herewith as part hereof, marked Exhibit "Opinion of Mr. Chief Justice Taft."

That the several mandates of the Supreme Court of the United States, in said suit, entered of record in the Supreme Court of West Virginia, as well as the decrees and orders of the Supreme Court of West Virginia, entered by said Court in said suit, were all certified, as required by [fol. 195] law, to the Circuit Court of Kanawha County, West Virginia, on the 15th day of May, 1923, and entered of record in said Court on said last mentioned date; true and attested copies of which said several mandates, orders and decrees are filed herewith as part hereof, marked Exhibit "Eureka Mandates Affirming Final Decree."

That by decree entered by the Circuit Court of Kanawha County, West Virginia, on the 14th day of September, 1920, in the chancery cause of United Fuel Gas Company against Walter S. Hallanan, State Tax Commissioner, et al., No. 5433, the aforesaid Privilege Tax Act was held unconstitutional and void as to said United Fuel Gas Company, its property, franchises and business; a certified copy of said decree, including the written opinion of the said Court, made part of said decree, is filed herewith as part hereof, marked Exhibit "United Fuel Decree."

That said decree and the construction placed upon said Act, by said decree, as decided by the Supreme Court of West Virginia, was, later reviewed by the Supreme Court of the United States, upon writ of error to the Supreme Court of West Virginia, and the construction placed upon said Act by the Supreme Court of West Virginia was by the Supreme Court of the United States, at the October Term, 1921, thereof, in Docket No. 276, held to be erroneous; and a copy of the opinion of the Supreme Court of the United States, delivered by Mr. Justice Holmes, as reported in 257 U. S. Reports, page 277, is filed herewith as part hereof marked "Opinion by Mr. Justice Holmes in Gas Case." The application of said Act to the said business of United Fuel [fol. 196] Gas Company involved in said suit, was, upon a second writ of error, considered by the Supreme Court

of the United States at the October Term, 1922, thereof, in Dockets Numbered 570 and 886, and said Act was further applied as per the written opinion of Mr. Chief Justice Taft, as reported in 261 U. S. Supreme Court Reports, at page 399; a copy of which opinion is filed herewith as part hereof, marked Exhibit "Opinion of Mr. Chief Justice Taft in Gas Case."

That the several mandates of the Supreme Court of the United States, in said suit, were entered of record in the Supreme Court of West Virginia, as well as the decrees and orders of the Supreme Court of West Virginia, entered by said Court in said suit, were all certified, as required by law, to the Circuit Court of Kanawha County, West Virginia, on the 25th day of May, 1923, and entered of record in said Court on said last mentioned date; true and attested copies of which said several mandates, orders and decrees, are filed herewith as a part hereof, marked Exhibit "United Fuel Mandates, Affirming Final Decree."

That, after the said Act, House Bill No. 5, was so construed by the Supreme Court of the United States and by the Supreme Court of West Virginia, the said Act was treated by the State of West Virginia and its Tax Commissioner and by the Attorney General of said State as being entirely invalid and void, not only as to the entire business of United Fuel Gas Company, but also as to the like business of Hope Natural Gas Company, and no taxes were ever collected under said Act and said Act was repealed by the Legislature of West Virginia in the year 1921.

The position of counsel for defendants, in respect to in- [fol. 197] cluding the Steptoe Law, the Transportation Act of 1919, the decrees, mandates and opinions of the several courts and judges, in respect to the litigated cases in reference to the same, is as follows:

While the same are what they purport to be as set forth in these Stipulations, yet they are immaterial and irrelevant as facts and have no place in a stipulation of facts.

It is stipulated and agreed between the plaintiff and defendants, by and with the consent of the Court, that Paragraph Eighteenth of the Bill of Complaint be entirely elimiated and stricken therefrom, and that Paragraph Eighteenth of the Answer of the Defendants, which applies to

the said Eighteenth paragraph of said Bill, be entirely eliminated and stricken therefrom; and that all questions arising upon the matters contained in the said Eighteenth paragraph of said Bill and Answer be eliminated from consideration herein. It is understood that by the foregoing action neither party concedes that the Act in question is either valid or invalid as applied to oil, and that this stipulation shall not be used by either party in any other proceeding or suit wherein the validity of said Act is brought in question as applied to the production of oil.

It is agreed and stipulated in connection with Paragraph Twenty-eighth of the Defendants' Answer as follows:

"That none of the plaintiff's contracts with the companies purchasing gas from it (referred to in these Stipulations) require the plaintiff to deliver such gas from any particular well, group of wells or particular section of [fol. 198] plaintiff's gas territory; and that plaintiff's selling prices for gas delivered under any of its said contracts apply uniformly to all gas delivered to the respective purchasers regardless of whether the same is produced or purchased by plaintiff at, near to or distant from the respective points of delivery mentioned in said contracts, and all of such gas is delivered in the manner hereinbefore described.

That natural gas is produced by drilling wells into gas containing strata in the earth and that it is a mineral peculiar to itself; it is invisible and in a sense intangible and cannot be moved, handled, stored and delivered as coal, crude oil or petroleum, limestone, sand or other mineral products, or timber; that coal, limestone, sand, timber and the products thereof, may be stored in the open without restraint or protection and that crude oil, or petroleum, may be stored in open top tanks; that when the gas bearing stratum is punctured, the natural gas found therein often has heavy natural pressure, called rock pressure, and because of its natural pressure it must be confined in the well or in pipe lines of sufficient strength connected therewith to resist the natural pressure, or otherwise it will escape; because of its natural pressure natural gas will, when confined in pipe lines, travel or transmit itself therein until the pressure encountered and the friction in the lines overcome the rock pressure. That, owing to the peculiar nature of natural gas and the impracticability of carrying

it for others as a business, as well as for other reasons, the plaintiff will not transport it for others as a common car-
[fol. 199] rier and this is true as to all other gas companies having pipe line systems in West Virginia. Natural gas may be and is taken from the pipe line and, under reduced pressure, used directly, and without refinement or treatment, for heat, light and power, wherein it differs from other products and things in the Act mentioned. Coal, limestone, sand, timber and crude oil or petroleum are tangible, can be and are moved, handled, stored, and delivered; can be transported by wagons, trucks and railroad cars and railroad tank cars, although crude oil or petroleum is more largely transported by pipe lines; can be and are delivered to purchasers thereof at the the place of production to be transported by common carriers or delivered to common carriers for transportation to the purchasers. That coal, limestone and sand may be opened when discovered and left open indefinitely without loss or escape thereof or appreciable damage thereto, in a state of rest and the extent and quantity thereof definitely ascertained and determined.

It is agreed and stipulated that an Act of the Legislature, passed April 29, 1921, approved by the Governor May 3, 1921, in effect July 1, 1921, and being Chapter 110, Acts of the Legislature 1921, entitled, "An Act Providing for the Raising of Additional Revenues by a Tax Upon the Privilege of Engaging in Certain Occupations and Upon the Privilege of Making Sales of Property," &c., shall be and is hereby made a part hereof, marked "Act 1921."

[fol. 200] And that copies of the annual returns of the plaintiff to the State Tax Commissioner of West Virginia, under and pursuant to the Act last aforesaid, on Form 101—B-P Tax, for the periods July 1 to December 31, 1921, for years ending December 31, 1922, December 31, 1923, December 31, 1924, and for part of year from January 1, 1925, to June 30, 1925, shall be and are hereby made parts of these Stipulations, marked, respectively, "Return 1921," "Return 1922," "Return 1923," "Return 1924," and "Return 1925."

It is hereby agreed and stipulated that the facts agreed to herein are so agreed upon for the purposes of this cause only upon the hearing thereof and in any and all appeals or appellate proceedings in any court or courts wherein such

proceedings are had or prosecuted; and that this stipulation shall not be used to the prejudice of any party hereto in any other proceeding or proceedings now pending, or hereafter instituted, in any court or courts.

It is further stipulated between the parties hereto, by their respective counsel, that each party hereto reserves the right to insist upon the irrelevancy or immateriality of any of the facts in this stipulation.

[fol. 201] Witness the signatures of the plaintiff hereto by its counsel and of the defendants hereto by their counsel.

Hope Natural Gas Company, H. D. Rummel, Charles Powell, Anthony F. McCue, Kemble White, S. E. W. Burnside, Edward M. Borger, Arthur E. Young, Its Counsel. Grant P. Hall, State Tax Commissioner of the State of West Virginia; Howard B. Lee, Attorney General of the State of West Virginia, by Howard B. Lee, Attorney General; R. Dennis Steed, Assistant Attorney Gen'l; R. A. Blessing, Assistant Attorney Gen'l; John T. Simms, Counsel for State Tax Comm'r. T. C. Townsend, Fred O. Blue, Special Counsel for Defendants.

[fol. 202] EXHIBIT: "STIPULATION U. F. G. CO."

That the business engaged in at the present by United Fuel Gas Company, its method of conducting the same, its pipe lines, facilities, equipment, etc., are the same and of exactly the same character, except somewhat enlarged, as in 1919, and following years while the suit referred to in another part of this stipulation of United Fuel Gas Company against Walter S. Hallanan, State Tax Commissioner et al., was pending; and that in the answer filed in said suit by the defendants therein it was averred and admitted as follows:

(a) That the true purpose and legal effect of the plaintiff's incorporation are set forth and defined in its charter aforesaid, and fixed thereby, and that, under and pursuant to such charter provisions, the plaintiff and its predecessor in title have since their incorporation carried on, and the

plaintiff is now carrying on, a most extensive business within the State of West Virginia in producing, transporting, distributing and selling natural gas, all within said State.

(b) That the plaintiff has been engaged in transporting and selling gas both within and without the State of West Virginia, as set forth in Paragraph V of the Plaintiff's bill.

(c) That the defendants assume that the plaintiff therein has correctly stated in its bill the ownership and location of its pipe lines owned and used by it for the transportation and sale of natural gas.

(d) That the defendants believe the plaintiff to have correctly stated in its bill the amount of gas sold by it dur- [fol. 203] ing the year ending July 1, 1919, to consumers in the States of Ohio, Kentucky and West Virginia, and that said company did produce in West Virginia and did sell to consumers in West Virginia during said year at least the quantity of gas therein stated, and that the whole of said gas was by said plaintiff therein transported from the place of production in said State of West Virginia to consumers of said gas also within said State.

((e) That the defendants therein claimed that the plaintiff company was carrying on the business of intrastate transportation of gas within the State of West Virginia.

That in the stipulation of facts filed and used in said suit it was agreed by the parties thereto through their counsel that certain matters and facts therein stipulated to be taken and treated as facts proven by competent testimony, and among which were the following:

(a) That in each of the counties in the State of West Virginia therein named in which the plaintiff's pipe lines are situate it transports, delivers and sells gas to domestic consumers along its lines, etc.

(b) That with reference to the gas sold and delivered to the four companies therein named (Ohio Fuel Supply Company, Columbia Gas and Electric Company, Hope Natural Gas Company and Pittsburgh & West Virginia Gas Company), all of the gas delivered at any time to Ohio

Fuel Supply Company had been and continued to be by the latter company transported to points outside the State of West Virginia, and of the gas sold and delivered to Columbia Gas and Electric Company at least 99 per cent. [fol. 204] thereof had been and continued to be by the latter company transported outside the State of West Virginia and sold to consumers outside of said State, and that of the gas sold to Pittsburgh & West Virginia Gas Company at least 88 per cent. thereof had been and continued to be by the latter company transported outside of the State of West Virginia and sold to consumers outside of the State, and that of the gas sold to Hope Natural Gas Company at least 67 per cent. thereof had been and continued to be by the latter company transported outside of the State of West Virginia and sold to consumers outside the said State, and that not more than 1 per cent. of the gas so delivered to said Columbia Gas and Electric Company, not more than 12 per cent. of the gas so delivered to Pittsburgh & West Virginia Gas Company, and not more than 33 per cent. of the gas so delivered to Hope Natural Gas Company having been sold by said companies, respectively, in the State of West Virginia or consumed in said State.

(c) That Ohio Fuel Supply Company transported the gas purchased by it from the plaintiff therein a distance of less than ten miles, its entire system of pipe lines in the States of West Virginia being of less distance than ten miles in length, and that each of the said other three companies (above named) was the owner and operator of a separate system of pipe lines within the State of West Virginia, more than ten miles in length, and that subsequently all of the gas sold and delivered by the said plaintiff to each of them was by them, respectively, transported a distance of more than ten miles within the State of West Virginia.

[fol. 205] That in the brief filed in the Supreme Court of Appeals of the State of West Virginia in the case last referred to of United Fuel Gas Company against Walter S. Hallanan, State Tax Commissioner et al., and the case of The Eureka Pipe Line Company against the same defendants, on behalf of the said defendants, the following language appeared:

(a) Under the heading "Statement in the Gas Case," pages 14 and 15 of the brief—

(1) "The present United Fuel Gas Company has since carried on extensive business in buying gas lands, leasing lands for gas, buying gas from other companies and individuals, and transporting and selling the same to purchasers within the State of West Virginia and to some without the State of West Virginia. The answer states, and is taken as true, that said Company since its charter has carried on and is now carrying on a most extensive business within the State of West Virginia in producing, transporting, distributing and selling natural gas, all within said State."

(2) "The Gas Company owns or holds gas rights, in, approximately, 600,000 acres of land situate in the Counties of Roane, Jackson, Clay, Kanawha, Putnam, Cabell, Wayne, Mingo, Boone and Logan, in the State of West Virginia, and has pipe lines for the transportation of gas in each of said named counties except the County of Boone, and also has pipe lines in the County of Calhoun and Gilmer, West Virginia. In each of said counties it transports, delivers and sells gas to domestic consumers along its lines, to industrial and manufacturing consumers, and [fol. 206] to the inhabitants of certain of the cities, towns and villages therein."

(3) Page 16: "The Gas Company owns and operates seven so called groups of pipe lines, specified and described in its bill, three of which are wholly within the State of West Virginia, and all of which are chiefly within the State of West Virginia."

(4) Page 17: "After stating the quantity of gas produced or purchased and sold by the gas company during the year ending July 1, 1919, and the quantity produced and sold to Ohio Fuel Supply Company, Columbia Gas and Electric Company, Hope Natural Gas Company and Pittsburgh & West Virginia Gas Company, 'making an additional amount exceeding 33,000,000 M. cubic feet transported, sold and delivered to these four companies. All of this 33,000,000 M. cubic feet is delivered to these four companies within the State of West Virginia, and upon

delivery the gas belongs to said companies, respectively, for such use as they may see fit to make of it, namely, either to transport it for sale outside of West Virginia, or to sell it to consumers within the State of West Virginia."

(5) Pages 17 and 18: "It appears from the stipulation that all the gas delivered by the Gas Company to the Ohio Fuel Supply Company has, after such delivery, been transported by said Company a short distance in West Virginia and thence to points outside of West Virginia, no part thereof having been consumed in West Virginia; that of the gas sold and delivered in West Virginia to the Co-[fol. 207] lumbia Gas and Electric Company it has transported 99% outside of the State and sold not more than 1% to consumers in West Virginia; that of the gas sold to the Pittsburgh and West Virginia Gas Company, and delivered in West Virginia, said Company has transported 88% outside of the State and sold it, and has sold 12% to consumers within West Virginia; that of the gas sold and delivered in West Virginia to the Hope Natural Gas Company 67% has been by it transported outside of the State and sold to consumers, and 33% has been sold by it to consumers in West Virginia.

(6) Page 20: "It is alleged in the bill and admitted in the answer that the entire system of pipe lines of the Gas Company operated by it for the transportation of natural gas greatly exceeds a distance of ten miles in length and that more than seventy-five per cent of all the natural gas transported by it through its pipe lines is so transported a distance of more than ten miles. A small quantity of gas is transported by the Gas Company a distance less than ten miles."

(7) Pages 20 and 21: "The bill avers that there are numerous persons, firms and corporations in the State of West Virginia engaged in the production and transportation of natural gas by means of pipe lines who transport all the natural gas so produced by them a distance of less than ten miles by the entire system of lines owned, controlled or operated by them, and that there are a large [fol. 208] number of persons, firms and corporations engaged in the production and transportation of natural gas

by pipe lines in the State of West Virginia whose entire system of pipe lines covers a distance of less than ten miles. * * * Such answer charges that there are few, if any, persons, firms or corporations in the State of West Virginia engaged in the business of transporting natural gas, as distinguished from the production thereof, whose entire system of lines were less than ten miles in length and avers that said allegations of said bill, if true, relate to gas producers, and not to pipe line transportation companies, and admits that a number of gas producers have some small quantities of pipes and lines connecting their wells with transportation companies, which pipes and lines are less than ten miles in length, but that such producers are in no proper sense engaged in the transportation of gas by pipe lines."

(8) Pages 21 and 22: "The stipulation (Paragraph 5) makes plain that the persons, firms and corporations meant and referred to in Paragraph XII of the plaintiff's bill, and described therein as engaged in transportation, are merely gas producers, and that the so-called pipe lines operated by them are only used for gathering and assembling the gas produced from their various wells at some convenient central point for sale to some other company equipped for the transportation thereto to distant localities, and in this way and as incidental to the production and sale of their gas such producers transport their gas for a [fol. 209] short distance and less than ten miles. It is further agreed by said stipulation that the business of the Gas Company remained at its date, and that it was contemplated it would remain in the future, as of the same general character as during the year ending July 1, 1919, and that it would continue to transport and sell gas to the same classes of purchasers and in substantially the same way in the future as during said year."

(Here follow exhibits marked side folio pages 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, and 234)

Exhibit: "Copy of Tax Act and Rules and Regulations."

RULES AND REGULATIONS

CONCERNING

THE WEST VIRGINIA GROSS SALES LICENSE TAX

Required of Persons, Firms, Corporations and Others, for the Privilege of Engaging in Business in West Virginia.

Under an Act of First Extraordinary Session West Virginia Legislature 1925, being Committee Substitute for Senate Bill No. 1

(Passed June 5, 1925; in effect July 1, 1925)

STATE OF WEST VIRGINIA

Office of State Tax Commissioner

Charleston, July 30, 1925

DEFINITIONS OF TERMS USED IN THESE RULES

1-A. The term "person" or the term "company" includes any individual, firm, copartnership, joint adventure, association, corporation, trust, or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

1-B. The terms "tax commissioner" and "state tax commissioner" mean the state tax commissioner of the state of West Virginia.

1-C. The term "tax year" or "taxable year" means either the calendar year, or the taxpayer's fiscal year when permission is obtained from the tax commissioner to use same as the tax period in lieu of the calendar year.

1-D. The term "sale" or "sales" includes the exchange of properties as well as the sale thereof for money, every closed transaction constituting a sale.

1-E. The term "taxpayer" means any person liable for any tax hereunder.

1-F. The term "gross income" means the value proceeding or accruing from the sale of tangible property (real or personal), or service, or both, and all receipts, actual or accrued, by reason of the investment of the capital of the business engaged in, including interest, discount, rentals, royalties, fees, or other emoluments however designated and without any deduction on account of the cost of property sold, cost of materials used, labor costs, interest or discount paid, or any other expense whatsoever, and without any deductions on account of losses.

1-G. The term "business" as used in these rules shall include all activities engaged in or caused to be engaged in with the object of gain, benefit or advantage, either direct or indirect, and not excepting sub-activities producing marketable commodities used or consumed in the main business activity, each of which sub-activities shall be considered business engaged in taxable in the class in which it falls.

1-H. The term "gross proceeds of sales" means the value proceeding or accruing from the sale of tangible property without any deductions on account of the cost of property sold, expenses of any kind, or losses.

GENERAL PROVISIONS

2-A. **Verification:** No return of any "person" will be accepted until verified by the oath of the individual making the same, unless it shall show upon its face conclusively the reasons why it was not practicable for the "person" to make the oath required, as well as the authority of the individual to make the oath who verifies for the taxpayer.

2-B. **Errors Corrected:** Any errors made by the taxpayer in computing the tax will be corrected by the tax commissioner and the tax re-assessed.

2-C. **Supplemental Returns:** The tax commissioner will in any case demand additional returns supplemental returns and such additional information not disclosed by the return filed as he shall deem necessary for the proper and correct assessment of the tax.

2-D. **Special Findings:** In order to administer the law fairly and equitably the tax commissioner will in any particular case in which by reason of special circumstances the general regulations do not apply, make such case the subject of a special finding upon the application of the taxpayer, accompanied by a recital of the facts pertaining to the assessment under consideration.

2-E. **Amending and Rescinding Rules:** Each rule herein promulgated shall stand as a ruling of the tax commissioner and shall govern the taxpayer in all things required of him in complying with the act until the same shall be modified, amended or rescinded. The commissioner may at any time supersede, modify rewind or amend any rule herein promulgated, or promulgate and establish additional rules and regulations.

2-F. **System of Bookkeeping:** No particular system of bookkeeping or accounting will be required by the tax commissioner in connection with returns concerning the privilege tax on businesses. However, the business transacted must be so recorded that each and every item set forth in the taxpayer's return may be readily verified by an examination of his books of account.

2-G. **Claims for Refund of Taxes Paid Erroneously:** All claims for refund of taxes paid erroneously shall be accompanied by amended returns properly executed showing the correct amount of taxes due, the amount paid in error, and the amount overpaid. In cases where the error is not apparent on the face of the return, the taxpayer shall be required to furnish a full and complete statement under oath setting out the reasons for the differences between the original and amended tax returns, and shall be prepared to afford ready access to his books and records so that a conclusive examination can be made for verification purposes. No claims for refunds will be considered after two years have elapsed after the filing of the original tax return.

WHO SHALL MAKE RETURNS

3-A. Each "person" as defined in the foregoing rules and in Section 1 of the Act (except those specifically exempted under Section 4) who shall engage in or continue to engage in business within this state shall be required to file annual returns within thirty days from the end of the tax year or fractional part thereof, provided his taxes (to be computed as hereinafter provided) shall not exceed the sum of one hundred dollars ($100.00) annually.

Taxpayers whose taxes (to be computed as hereinafter provided) shall exceed the sum of one hundred dollars ($100.00) annually are required to file quarterly estimated returns covering the preceding three months period, nine, six and three months before the end of the tax year, thirty days after the end of each three months period being allowed for the filing of the returns.

FORM OF RETURN

4-A. **Double Blank for Annual Returns:** A double form has been prepared on which any or all annual returns required by Section 6 of the Act can be made. Annual return blanks are printed on blue paper.

4-B. **Single Blank for Quarterly Returns:** A single form has been prepared on which any or all quarterly returns required by Section 5 of the Act are to be made. Quarterly return blanks are printed on pink paper.

4-C. **What Included in One Annual Return:** There shall be embraced in one annual return by each taxpayer, whether he be engaged in the business of producing, manufacturing, selling, banking, contracting, operating a theatre or other place of amusement, operating a public utility, or engaging in any other business within the State of West Virginia, and whether he be engaged in one or more of such businesses, his gross value, gross proceeds from sales or gross income, as the case may be, as per schedules and in the detail required by Form 201 and the supplementary schedules contained therein, issued by this office for the annual return.

4-D. **What Included in One Quarterly Return:** There shall be embraced in one quarterly return by each taxpayer, whether he be engaged in the business of producing, manufacturing, selling, banking, contracting, operating a theatre or other place of amusement, operating a public utility, or engaging in any other business within the State of West Virginia, and whether he be engaged in one or more of such businesses, the estimated gross value, gross proceeds from his sales or the estimated gross income for the period to be covered as required by Form 202 issued by this office for quarterly returns.

4-E. The forms are so arranged that if the taxpayer's business activities require the payment of more than one of the privilege taxes at the rates applicable to each business as provided under the Act, the gross value, gross proceeds of sales or gross income to be used as the measure of the tax will be reported thereon, separately for each business, as for example, a person engaged in the manufacturing business who also operates a public utility.

PERSONS EXEMPT

5-A. **National Banks:** National banks are the creatures of Federal Law and are taxed under the existing laws to the full extent permitted by Federal statutes. The state is not permitted to levy the tax imposed by this act upon national banks, and no return is required of a national bank.

5-B. **Exempted by Name:** All companies, associations, societies, orders, leagues, etc., enumerated in Section 4 of the act, are exempt; but each companies, etc., shall, by affidavit, or otherwise, at the request of the state tax commissioner, establish their right to the exemption provided, in which case it will not be sufficient to merely declare that they are exempt, but they must show the character and purpose of the organization, the manner of distributing the net income, if any, and that none of the net income inures to the benefit of any private stockholder or individual. In the absence of such a showing, such companies may, at any time, be required to make returns or disclose their books of account for examination in order that their status may be determined.

SUBJECTS AND MEASURES OF TAX

6-A. The Gross Sales tax upon every person engaging or continuing within West Virginia, in the business of mining and purchasing for sale, for profit, or use, any coal, oil, natural gas, limestone, sand or other mineral product, or felling and purchasing timber for sale, profit, or use, is an amount equal to the percentages of the value of the articles purchased, set out below, as shown by the gross proceeds of sales (except as provided below under the head of Special Provisions—Relating to Producers under the conditions recited), **regardless of whether sale was made within or without West Virginia or whether sold at wholesale or retail:** an exemption at the rate of $10,000.00 annually to be deducted from such gross proceeds of sales before computing the tax.

The following exemptions are also allowed:

Freight charges, estimated or actual, if such charges have been added to the price from the point of shipment, (taxpayer's shipping point) to the point of delivery and such charges have been included in invoice to the buyer.

Cash discounts, if shown on the face of the invoice, and actually deducted by the buyer.

	Rate of Tax	Rate per $100.00
Production of Coal (See Item A-1, Form 201)	42-100 of 1%	or $0.42
Production of Oil (See Item A-2, Form 201)	1%	or 1.00
Production of Natural Gas (See Item A-3, Form 201)	185-100 of 1%	or 1.85
Production of Other Minerals (See Item A-4, Form 201)	45-100 of 1%	or .45
Production of Timber (See Item A-4, Form 201)	45-100 of 1%	or .45

6-B. **Manufacture (See Item B, Form 201):** The privilege tax upon every person engaging or continuing within West Virginia in the business of manufacturing, compounding, or preparing for sale, profit, or use, any article or articles, substance or substances, commodity or commodities, is an amount equal to twenty-one one-hundredths of one per cent of the value of the articles manufactured, compounded, or prepared for sale as shown by the gross proceeds of sales (except as provided below, under the head of "Special Provisions—Relating to Manufacturers", under the conditions recited), **regardless of whether such articles were sold within or without West Virginia, or whether sold at wholesale or retail;** an exemption **at the rate of $10,000** annually to be deducted from such gross proceeds of sales before computing the tax, and other exemptions as follows:

Freight charges, estimated or actual, if such charges have been added to the price from the point of shipment, (taxpayer's shipping point) to the point of delivery and such charges have been included in invoice to the buyer.

Trade discounts which are regularly allowed under similar conditions of sale, if such discounts are allowed and deducted on the face of the invoice by the seller.

Cash discounts, if shown on the face of the invoice, and actually deducted by the buyer.

6-C. **Business of selling tangible property, other than wholesalers or jobbers** (See Item C, Form 201): The privilege tax upon every person engaging or continuing within West Virginia in the business of selling any tangible property whatsoever, real or personal, (not including, however, bonds or other evidences of indebtedness, or stocks) is an amount equal to one-fifth of one per cent of the gross income of the business, such gross income being subject, before the computation of the tax, to a specific exemption **at the rate of $10,000** annually, and other exemptions as follows:

The proceeds of any sales of articles, substances or commodities, by the "person" producing, manufacturing, compounding or preparing the same for sale, **when such proceeds are included in determining the tax imposed under Sections 2-a and 2-b of the Act (Production and Manufacture).**

Freight charges, estimated or actual, if such charges have been added to the price from the point of shipment, (taxpayer's shipping point) to the point of delivery and such charges have been included in invoice to the buyer.

Trade discounts which are regularly allowed under similar conditions of sale, if such discounts are allowed and deducted on the face of the invoice by the seller.

Cash discounts, if shown on the face of the invoice, and actually deducted by the buyer.

Gross income (gross sales) derived from shipments made from stores or warehouses located in out-of-state points of any taxpayer whose main office is in West Virginia, and whose business is conducted chiefly within this State. All gross income of the business is to be reported for taxation regardless of whether shipments are made to out-of-state points, provided the goods are shipped from West Virginia stores or warehouses. Likewise all deliveries to customers in West Virginia covered by invoices issued by the West Virginia office, regardless of point of origin, are to be included in taxable gross income.

Taxpayers selling goods on the installment plan, whereby the title to the articles sold is retained by the vendor until all deferred payments have been met, are given the option of reporting the gross sales as made, without deduction on account of goods returned, or they may report on the cash received basis, in which case the actual receipts only will be returned for taxation.

In the case of taxpayers reporting on the gross sales basis without regard to collection, they will be classified for taxation under Section 2-c of the law and the tax levied at the rate of 1-5 of 1% on the gross sales of the business. When, however, return is made on the cash received basis taxpayers will be required to report under Section 2-g of the law, and the tax will be levied at the rate of 3-10 of 1% of the gross income of the busine , subject to deduction for goods returned. In the second case under the hire-purchase or installment system the business consists not only in the sale of tangible property, but in many cases rentals are charged for the use of articles.

6-D. **Wholesale Merchandising and Jobbing** (See Item C, Form 201): The privilege tax upon a wholesaler or jobber known to the trade as such, and having regularly in his exclusive employ one or more traveling salesmen, is an amount equal to one-twentieth of one per cent of the gross income (Gross sales plus other income—see Section 1 for definition of gross income) of the business, such gross income being subject, before the tax is computed, to a specific exemption at the rate of $10,000 annually, and other exemptions as follows:

The proceeds of any sales of articles, substances or commodities, by the "person" producing, manufacturing, compounding or preparing the same for sale, when such proceeds are included in determining the amount of the tax imposed under Sections 2-a and 2-b of the Act (Production and Manufacture).

Freight charges, estimated or actual, if such charges have been added to the price from the point of shipment, (taxpayer's shipping point) to the point of delivery and such charges have been included in invoice to the buyer.

Trade discounts which are regularly allowed under similar conditions of sale, if such discounts are allowed and deducted on the face of the invoice by the seller.

Cash discounts, if shown on the face of the invoice, and actually deducted by the buyer.

Gross income (Gross sales) derived from shipments made from stores or warehouses located in out-of-state points of any taxpayer whose main office is in West Virginia, and whose business is conducted chiefly within this State is also exempted. All gross income (gross sales) of the business is to be reported for taxation regardless of whether shipments are made to out-of-state points, provided the goods are shipped from West Virginia stores or warehouses. Likewise all deliveries to customers in West Virginia covered by invoices issued by the West Virginia office, regardless of point of origin, are to be included in taxable gross income.

Gross income is not to be confused with gross profits, and attention is called to the definition of the term "gross income" in Section 1 of the Act reading as follows:

> "The term "gross income" means the value proceeding or accruing from the sale of tangible property (real or personal), or service, or both, and all receipts, actual or accrued, by reason of the investment of the capital of the business engaged in, including interest, discount, rentals, royalties, fees or other emoluments however designated and without any deduction on account of the cost of property sold, cost of materials used, labor costs, interest or discount paid, or any other expense whatsoever; and without any deductions on account of losses."

6-E. **Banks and Public Utilities:** The privilege tax for engaging in their respective businesses by banks, steam railroads, street railroads, companies operating pipe lines carrying oil or gas, telephone, telegraph, express, electric light and power companies, and all other public service companies or utilities, is an amount equal to the percentage of the gross income, as defined under 1-F, Rules, Section 1 of the Act, of the business as set out in the schedule below, such gross income, before the tax is computed, being subject to a specific exemption at the rate of $10,000 annually:

Rates of Tax	Rate per $100.00
Banks (See Item D-1, Form 201)	3-10 of 1% or $0.30
Steam Railroads (See Item D-2, Form 201)	1% or 1.00
Street Railroads (See Item D-4, Form 201)	2-5 of 1% or .40
Companies operating pipe lines carrying oil or gas (See Item D-2, Form 201)	1% or 1.00
Telephone, Telegraph, Express, Electric Light and Power companies (See Item D-3, Form 201)	3-5 of 1% or .60
All other Public Service Companies or Utilities (See Item D-4, Form 201)	2-5 of 1% or .40

The proceeds of any sales of articles, substances or commodities, by the "person" (see Section 1-A) producing, manufacturing, compounding, or preparing the same for sale, when such proceeds are included in determining the amount of the tax imposed under Sections 2-a and 2-b of the Act (Production and Manufacture), are also exempted from the tax levied under Section 2-d of the Act.

There is excepted from the taxable gross income so much thereof as is derived from business conducted in commerce between this state and other states of the United States, or between this state and foreign countries.

Cash discounts, if shown on the face of the invoice, and actually deducted by the buyer, may be deducted from gross income for tax purposes.

6-F. **Other Businesses:** The privilege tax for engaging or continuing within this State in the business of contracting, or in the business of operating a theatre, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, race track, or any other place at which amusements are offered the public, and in all other businesses not included in the preceding sections of the act, is an amount equal to the percentages, as set out below, of the gross income, as defined under 1-F Rules, Section 1 of the Act, of the business, such gross income being subject, before the tax is computed, to a specific exemption at the rate of $10,000.00 annually:

Rate of Tax	Rate per $100.00
Contracting (See Item E, Form 201)	3-10 of 1% or $0.30
Operating theatres and other places of amusement (See Item F, Form 201)	1% or 1.00
All other businesses (See Item G, Form 201)	3-10 of 1% or .30

There is excepted from the taxable gross income any gross income which has been included in the measure of the tax levied under sections 2-a and 2-b of the Act.

Cash discounts, if shown on the face of the invoice, and actually deducted by the buyer, may be deducted from gross income for tax purposes.

LICENSES

7-A. The tax commissioner's receipt showing payment of the gross sales tax due shall answer in all respects as a license to engage in the particular business or businesses for which the tax paid was imposed. The gross sales tax is imposed in addition to all other licenses and taxes levied by law. The taxpayer's cancelled check or voucher shall be held by him as a receipt for taxes paid, except when payment is made by means that leave the tax payer no evidence of such payment, in which case a receipt will be mailed to the tax payer.

SPECIAL PROVISIONS

Relating to Producers

8-A. Taxes levied under Section 2-a are based upon the value of the minerals or timber produced for sale, profit or use, and in all cases where actual sales are made, except wherein the buyer and seller are so related as to render the price more or less a matter of arbitrary agreement regardless of actual sales value, the selling price is conclusively deemed to be the value.

8-B. To cover instances in which sales are made wherein the buyer and seller are so affiliated as to bring into question the fairness of the price for tax purposes, the act provides:

> "In determining value, however, as regards sales from one to another of affiliated companies or persons, or under other circumstances where the relation between the buyer and seller is such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the tax commissioner shall prescribe uniform and equitable rules for determining the value upon which such privilege tax shall be levied, corresponding as pearly as possible to the gross proceeds from the sale of similar products of like quality or character by the other taxpayers where no common interest exists between the buyer and seller, but otherwise under similar circumstances and conditions."

In all cases covered by the foregoing, the taxpayer, as to articles having an established market value sold during the license year to affiliated companies, shall make return showing the quantity of the articles so sold each month and the average market value for that month. In all cases in which the articles have no established market value, but articles of a similar kind are sold on contract during the tax year to persons or companies not affiliated with the taxpayer, the average contract price during each month of the year at which similar articles are sold, shall be taken as the basis of value.

8-C. To cover instances where the product is shipped out of the state without being sold, the Act provides:

> "If any person liable for any tax under sections 2-a or 2-b shall ship or transport his products or any part thereof out of the state without making sale of such products, the value of the products or articles in the condition or form in which they existed when transported out of the state shall be the basis for the assessment of the tax imposed in said paragraphs; and the tax commissioner shall prescribe equitable and uniform rules for ascertaining such value."

In all cases covered by the foregoing provision, the taxpayer, as to articles having an established market value during the license year, transported out of the State without being sold, shall make return showing the quantity of the articles transported each month and the established market value for that month. In all cases in which the articles have no established market value, but articles of a similar kind are sold during the tax year, the established price during each month of the year in which similar articles are sold shall be taken as the basis of value.

8-D. To cover instances in which the minerals or timber are produced by persons engaged in the manufacturing business and other businesses taxable under the succeeding sections of the law, the Act provides:

> "All persons exercising privileges taxable under sections 2-b, 2-c, 2-d, 2-e, 2-f, or 2-g, producing minerals or timber the production of which is taxable under section 2-a, and using or consuming same in their business, shall be deemed to be engaged in the business of mining and producing minerals or timber for sale, profit or use, and shall be required to make returns on account of the production of said minerals or timber showing the gross proceeds therefrom, or the equivalent thereof, in accordance with uniform and equitable rules for determining the value upon which such privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character by other taxpayers, which rules the tax commissioner shall prescribe."

In all cases covered by the foregoing provision, the taxpayer as to minerals or timber having an established market value during the license year, used or consumed in manufacturing or other businesses shall make return under Section 2-a of the Act (for the privilege of engaging in the business of producing minerals or timber) showing the quantity of the mineral or timber used or consumed each month and the average market value for that month. In all cases in which the minerals or timber have no established market value, but articles of a similar kind are sold during the tax year, the average price during each month of the year at which similar articles are sold shall be taken as the basis of value.

Relating to Manufacturers

9-A. Taxes levied under Section 2-b are based upon the value of the articles manufactured, compounded or prepared for sale, profit, or use, and in all cases where actual sales are made, except wherein the buyer and seller are so related as to render the price more or less a matter of arbitrary agreement, regardless of actual value, the selling price is conclusively deemed to be the value.

To cover instances in which sales are made wherein the buyer and seller are so affiliated as to bring into question the fairness of the price for tax purposes, the Act provides:

> "In determining value, however, as regards sales from one to another of affiliated companies or persons, or under other circumstances where the relation between the buyer and seller is such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the tax commissioner shall prescribe uniform and equitable rules for determining the value upon which such privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character by the other taxpayers where no common interest exists between the buyer and seller, but otherwise under similar circumstances and conditions."

9-B. To cover instances where the product is shipped out of the State without being sold, the Act provides:

> "If any person liable for any tax under sections 2-a or 2-b shall ship or transport his products or any part thereof out of the State without making sale of such products, the value of the products or articles in the condition or form in which they existed when transported out of the state shall be the basis for the assessment of the tax imposed in said paragraphs; and the tax commissioner shall prescribe equitable and uniform rules for ascertaining such value."

In all cases covered by the foregoing provisions, the taxpayer as to articles having an established market value during the license year, transported out of the State, without being sold, shall make return showing the quantity of the articles transported each month and the average market value for that month. In all cases in which the articles have no established market value, but articles of a similar kind are sold during the tax year, the average price during each month of the year at which similar articles are sold, shall be taken as the basis of value.

9-C. Manufacturers producing minerals or timber used or consumed in the manufacturing business the market value of which has been reported for tax purposes under Section 2-a of this Act, shall be permitted to include the value reported under the head of "Exemptions." (See Schedule B, line 7, Form 201) to be deducted from the total sales value of manufactured articles before figuring the tax.

9-D. If a manufacturer partially completes an article in the state of West Virginia, ships the unfinished article into another state for further and additional treatment, and then re-ships the unfinished product into West Virginia for completion and sale, all manufacturing done by the same person, the privilege tax upon such manufacturer will be based upon a portion of the gross proceeds derived from the sale, which portion shall be represented by a fraction, the numerator of which represents the cost of the raw material and the cost of manufacturing in West Virginia; and the denominator, the cost of the raw material and of manufacturing in all states. To illustrate: The raw material in an article costs $50.00; is partly manufactured in West Virginia at a cost of $50.00; the manufacturing work done in other states is at a cost of $50.00; the manufacturing work done in West Virginia to complete the article is at a cost of $50.00; the finished article sells for $400.00. The tax will be levied upon 150–200 of the selling price of $400.00, or upon $300.00.

9-E. Partially manufactured articles or goods brought into West Virginia for completing the process of manufacturing, shall, in all cases not included in the above, be treated as raw material, and the privilege tax shall be based upon the selling price of the article.

TIME FOR FILING RETURNS AND PAYMENT OF TAX

ANNUAL RETURNS

10-A. The act authorizes the preparation and filing of annual returns as of a fiscal year ending December 31, and provides, if the taxpayer's annual accounting period closes on a date other than December 31, he may, with the assent of the tax commissioner, make his annual return and pay the tax for the year covering his accounting period as shown by his books of account.

The year ending December 31 is the normal year for tax purposes, and has been adopted as such by practically all taxpayers. As the basis of the tax is gross income or gross sales, and inventories are not necessary for the purpose of ascertaining the measure of the tax, it is only in exceptional cases that it will be necessary for the taxpayer to adopt a year other than that ending December 31. In such cases permission will be granted when application is made by the taxpayer setting out the reasons for the adoption of the special tax year. Taxpayers who are now using their own fiscal year for tax report purposes will be permitted to continue the use of their fiscal year.

All returns are required to be filed within thirty days from the end of the tax period.

QUARTERLY ESTIMATED RETURNS

10-B. Quarterly estimated returns are required under the law of all taxpayers whose taxes exceed $100.00 annually. Putting this on the basis of sales the following schedule shows the amount of sales value, sales or gross income the excess of which will require the filing of quarterly estimated returns:

Coal producers	$33,810.00
Oil producers	20,000.00
Natural gas producers	15,406.00
Producers of other minerals	32,223.00
Timber producers	32,223.00
Manufacturers	57,620.00
Selling tangible property	60,000.00
Wholesalers & jobbers	210,000.00
Banks	43,334.00
Steam railroads and pipe lines	20,000.00
Telephone, telegraph, express, electric light and power companies	26,667.00
Street railroads and other public utilities	35,000.00
Amusement businesses	20,000.00
Contracting and all other businesses	43,334.00

All persons engaged in any of the businesses included in the foregoing schedule will be required to file Quarterly Estimated Returns in case the gross value or gross income reported for tax purposes before the deduction of the $10,000.00 annual exemption exceeds the figures shown. Where the taxpayer is engaged in more than one business it will be necessary for him to ascertain by extending the tax whether his taxes will exceed $100.00 annually and subject him to the filing of quarterly estimated returns.

10-C. **Quarterly Estimated Returns are to be filed as follows:**

For the tax year ending December 31:

1 Return is to be filed within 30 days after March 31, to cover the three months ending March 31.

2. Return is to be filed within 30 days after June 30, to cover the three months ending June 30.

3. Return is to be filed within 30 days after September 30, to cover the three months ending September 30.

When the taxpayer for special reasons has applied for and obtained permission to file his returns using his own fiscal year as the tax period, quarterly estimated returns will be due within 30 days after the end of the quarters ending nine, six and three months respectively in advance of the end of the tax year. As for instance:

For the tax year ending January 31:

1. Return is to be filed within 30 days after April 30, to cover the three months ending April 30.

2. Return is to be filed within 30 days after July 31, to cover the three months ending July 31.

3. Return is to be filed within 30 days after October 31, to cover the three months ending October 31.

CONCERNING THE SPECIFIC EXEMPTION OF $10,000.00

11-A. In addition to other exemptions provided in the act for certain classes of taxpayers, a specific exemption of $10,000.00 is allowed each taxpayer, and is to be deducted from his gross proceeds of sales, gross value or gross income, before the computation of the tax is made. The application of this exemption depends upon the subject of the tax.

Following the act, the subjects of tax, in order, are as follows:

Item A. The privilege of engaging or continuing within this state in the business of mining and producing for sale, profit, or use, any coal, oil, natural gas, limestone, sand or other mineral product, or felling and producing timber for sale, profit, or use.

Item B. The privilege of engaging or continuing within this state in the business of manufacturing, compounding or preparing for sale any articles, substances or commodities.

Item C. The privilege of engaging or continuing within this state in the business of selling any tangible property.

Item D. The privilege of engaging or continuing within this state in the business of banking, steam railroad, street railroad, oil and gas pipe lines, telephone, telegraph, express, electric light and power companies and other public service companies.

Item E. The privilege of engaging or continuing within this state in the business of contracting.

Item F. The privilege of engaging or continuing within this state in the business of operating a theatre, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, race track, or any other place at which amusements are offered the public.

Item G. The privilege of engaging or continuing within this state in any other business not included in the preceding Items.
Note—See Form 201 Computation of Taxes for Items A to G.

Persons engaged in more than one of the businesses listed above are deemed by the act to have a license to engage in each business. When two or more businesses fall under the same Item the exemption is to be pro-rated among the several businesses. For example, a coal company's return shows gross value of coal produced of $100,000; gross proceeds from sale of coke manufactured of $75,000; gross sales of merchandise at wholesale $50,000; gross sales of merchandise at retail $50,000; and gross income from rentals and other sources $25,000. That company may claim the $10,000 exemption as follows: Item A, production of coal; Item B, manufacturing; Item C business of selling tangible property (wholesale and retail); Item G, engaging in rental business etc.; in all, four exemptions at the rate of $10,000 annually. The exemption for the business of selling tangible property will be $5,000.00 for retail and $5,000.00 for wholesale.

11-B. The specific exemption of $10,000 may be deducted in full from the gross value of the products of the business of producing minerals or manufacturing or from the gross income of other businesses conducted for a full year; but in cases wherein the business has been carried on for a part of the year only, the taxpayer is entitled to an exemption of that part of the sum of $10,000 which bears the same proportion to the total sum that the period of time during which he is engaged in such business bears to a whole year. To illustrate: If the taxpayer has engaged in the business of manufacturing coke for only seven months of the year, the amount of the specific exemption allowable is seven-twelfths of $10,000, or $5,833.33; if he has engaged in the business of selling merchandise at retail for only four months of the year, the amount of the specific exemption allowable is four-twelfths of $10,000, or $3333.33.

EXTENSION OF TIME FOR FILING RETURNS

12-A. **Annual Returns:** The annual return must be made and filed within thirty days from the end of the "tax year". For good cause shown in any particular case the tax commissioner may on application of the taxpayer extend the time for filing the annual return for a reasonable period. In all cases in which the taxpayer for any reason cannot complete and file his annual return within the time prescribed by law, that is, within thirty days from the close of the "tax year", prompt application within said thirty day period should be made to the tax commissioner for an extension of time. Any such application must state fully the reasons why the return cannot be made within the period prescribed by the act.

In all cases wherein extensions are allowed for the filing of Annual Returns a fourth quarterly estimated return will be required accompanied by remittance for the estimated amount of taxes due.

Quarterly Estimated Returns: The quarterly estimated return must be made and filed within thirty days from the end of the period to be covered by the return. No extension will in any case be granted for the filing of quarterly estimated returns.

IN CASE OF FAILURE TO PAY TAX WITHIN THE TIME ALLOWED BY LAW

13-A. When the taxpayer fails to file returns,—either quarterly estimated or annual returns,—within the time allowed under the act, the tax commissioner is directed to add an additional percentage of the taxes due as follows:
If tax is paid within 30 days after due date, 5% plus costs of collection.
If tax is paid later than 30 days after due date, 2% monthly additional.

The act provides that before the 2% monthly additional is added to the tax due a ten-day notice of delinquency shall first be sent to the taxpayer. This, however, does not mean that the 2% additional tax is to date from the expiration of the ten-day notice of delinquency, but that failure of the taxpayer to pay the tax within the ten days allowed under the notice will render him liable to the additional 2% monthly dating from the expiration of 60 days from the end of the tax year, plus the 5% penalty assessed against all taxpayers, regardless of notice of delinquency, who are later than 30 days after the end of the tax year in paying the tax. Costs of collection may also be added to the penalty of 5%.

14-A. Before a certificate of dissolution or withdrawal may lawfully be issued to any corporation authorized to do business in West Virginia it will be necessary for the proper officer of said corporation to make application to the tax commissioner for a certificate showing that all taxes due under the provisions of this act have been paid. Upon receipt of such application the tax commissioner will forward a certificate as to the payment of gross sales taxes to the secretary of state, who will then be authorized to issue the certificate of dissolution or withdrawal.

14-B. Any person selling out his business or stock of goods is required under the act to make an annual return within thirty days after the date of sale; and the purchaser is required to withhold enough of the purchase money to cover the amount of taxes due and unpaid until the vendor of the business shall produce a receipt from the tax commissioner showing that the taxes have been paid. Taxes due and unpaid are a lien upon the property sold, and any purchaser failing to withhold the purchase money until the taxes shall have been paid is made personally liable for the payment of the taxes accrued and unpaid on account of the operation of the business by the former owner.

The Gross Sales License Tax Law

An Act of the Legislature of West Virginia

FIRST EXTRAORDINARY SESSION 1925

(Being Committee Substitute for S. B. No. 1)

(Passed June 5, 1925; in effect July 1, 1925; approved by the Governor.)

AN ACT to provide for the raising of additional public revenue by a tax upon the privilege of engaging in certain occupations; to provide for the ascertainment, assessment and collection of such tax; to provide penalties for violations of the terms hereof; and to repeal certain statutes.

Be it enacted by the Legislature of West Virginia:

Section 1. That when used in this act, the term "person" or the term "company," herein used interchangeably, includes any individual, firm, co-partnership, joint adventure, association, corporation, trust, or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context. The terms "tax commissioner" and "state tax commissioner" mean the state tax commissioner of the state of West Virginia. The term "tax year" or "taxable year" means either the calendar year, or the taxpayer's fiscal year when permission is obtained from the tax commissioner to use same as the tax period in lieu of the calendar year. The term "sale" or "sales" includes the exchange of properties as well as the sale thereof for money, every closed transaction constituting a sale. The word "taxpayer" means any person liable for any tax hereunder. The term "gross income" means the value proceeding or accruing from the sale of tangible property (real or personal), or service, or both, and all receipts, actual or accrued, by reason of the investment of the capital of the business engaged in, including interest, discount, rentals, royalties, fees or other emoluments however designated and without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest or discount paid, or any other expense whatsoever; and without any deductions on account of losses. The term "business" as used in this act shall include all activities engaged in or caused to be engaged in with the object of gain, benefit or advantage either direct or indirect, and not excepting sub-activities producing marketable commodities used or consumed in the main business activity, each of which sub-activities shall be considered business engaged in taxable in the class in which it falls. The term "gross proceeds of sales" means the value proceeding or accruing from the sale of tangible property without any deduction on account of the cost of property sold, expenses of any kind, or losses.

Sec. 2. That from and after the thirtieth day of June, one thousand nine hundred twenty-five, there is hereby levied and shall be collected annual privilege taxes against the persons, on account of the business activities, and in the amounts to be determined by the application of rates against values or gross income, as the case may be, as follows:

Sec. 2-*a*. Upon every person engaging or continuing within this state in the business of mining and producing for sale, profit, or use, any coal, oil, natural gas, limestone, sand or other mineral product, or felling and producing timber for sale, profit, or use, the amounts of such tax to be equal to the value of the articles produced as shown by the gross proceeds derived from the sale thereof by the producer (except as hereinafter provided), multiplied by the respective rates as follows: coal, forty-two one hundredths of one per cent; oil, one per cent; natural gas, one and seventeen-twentieths of one per cent; limestone, sand or other mineral product, nine-twentieths of one per cent; timber, nine-twentieths of one per cent. The measure of this tax is the value of the entire production in this state, regardless of the place of sale or the fact that deliveries may be made to points outside the state.

Sec. 2-*b*. Upon every person engaging or continuing within this state in the business of manufacturing, compounding, or preparing for sale, profit, or use, any article or articles, substance or substances, commodity or commodities, the amount of such tax to be equal to the value of the articles manufactured, compounded or prepared for sale, as shown by the gross proceeds derived from the sale thereof by the manufacturer or person compounding or preparing the same (except as hereinafter provided), multiplied by a rate of twenty-one one-hundredths of one per cent. The measure of this tax is the value of the entire product manufactured, compounded, or prepared for sale, profit or use in this state, regardless of the place of sale or the fact that deliveries may be made to points outside the state.

If any person liable for any tax under sections 2-*a* or 2-*b* shall ship or transport his products or any part thereof out of the state without making sale of such products, the value of the products or articles in the condition or form in which they existed when transported out of the state shall be the basis for the assessment of the tax imposed in said paragraphs; and the tax commissioner shall prescribe equitable and uniform rules for ascertaining such value.

In determining value, however, as regards sales from one to another of affiliated companies or persons, or under other circumstances where the relation between the buyer and seller is such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the tax commissioner shall prescribe uniform and equitable rules for determining the value upon which such privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character by the other taxpayers where no common interest exists between the buyer and seller, but otherwise under similar circumstances and conditions.

Sec. 2-*c*. Upon every person engaging or continuing within this state in the business of selling any tangible property whatsoever, real or personal, (not including, however, bonds or other evidence of indebtedness, or stocks), there is likewise hereby levied, and shall be collected, a tax equivalent to two tenths of one per cent of the gross income of the business; *provided, however*, that in the case of a wholesaler or jobber, the tax shall be equal to one-twentieth of one per cent of the gross income of the business. The classification of wholesaler or jobber shall be used only by any person doing a regularly organized jobbing business, known to the trade as such, and having regularly in his exclusive employment one or more traveling salesmen.

Exhibit: "Quarterly Return."

Form 202—(Gross Sales Income Tax. This return is to be forwarded [illegible]

Sec. 2-d. Upon persons engaging or continuing within this state in their respective businesses, there is likewise hereby levied and shall be collected, taxes on account of the business engaged in equal to the gross income of the business multiplied by the respective rates as follows: banks, three-tenths of one per cent; steam railroads, one per cent; street railroads, two-fifths of one per cent; companies operating pipe lines carrying oil or gas, one per cent; telephone, telegraph, express, electric light and power companies, three-fifths of one per cent; other public service companies or utilities, two-fifths of one per cent. There shall be excepted from the gross income so to be taxed, so much thereof as is derived from business conducted in commerce between this state and other states of the United States, or between this state and foreign countries.

Sec. 2-*e*. Upon every person engaging or continuing within this state in the business of contracting, the tax shall be equal to three-tenths of one per cent of the gross income of the business.

Sec. 2-*f*. Upon every person engaging or continuing within this state in the business of operating a theatre, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, race track, or any other place at which amusements are offered the public, the tax shall be equal to one per cent of the gross income of any such business.

Sec. 2-*g*. Upon every person engaging or continuing within this state in any business not included in the preceding sections, there is likewise hereby levied, and shall be collected, a tax equal to three-tenths of one per cent of the gross income of any such business.

Nothing herein contained shall be construed so as to require the use of any gross income in the measure of the tax levied under sections 2-*c*, 2-*d*, 2-*e*, 2-*f* and 2-*g* of this act that has been included in the measure of the tax levied under the preceding sections hereof.

All persons exercising privileges taxable under sections 2-*b*, 2-*c*, 2-*d*, 2-*e*, 2-*f*, or 2-*g*, producing minerals or timber the production of which is taxable under section 2-*a*, and using or consuming same in their business, shall be deemed to be engaged in the business of mining and producing minerals or timber for sale, profit or use, and shall be required to make returns on account of the production of said minerals or timber showing the gross proceeds therefrom, or the equivalent thereof, in accordance with uniform and equitable rules for determining the value upon which such privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character by other taxpayers, which rules the tax commissioner shall prescribe.

Sec. 2-*h*. In computing the amount of tax levied hereunder, however, for any year, there shall be deducted from the values, or from the gross income of the business, as the case may be, an exemption of ten thousand dollars of the amount of such values or gross income. Every person exercising any privilege taxable hereunder for any fractional part of a tax year shall be entitled to an exemption of that part of the sum of ten thousand dollars which bears the same proportion of the total sum that the period of time during which such person is engaged in such business bears to a whole year.

Sec. 3. If any person after the thirtieth day of June, one thousand nine hundred and twenty-five, shall engage or continue in any business for which a privilege tax is imposed by this act, he shall be deemed to have applied for and to have duly obtained from the state of West Virginia a license to engage in and to conduct such business for the current tax year, upon the condition that he shall pay the tax accruing to the state of West Virginia under the provisions of this act; and he shall hereby be duly licensed to engage in and conduct such business.

Sec. 4. There are, however, exempted from the provisions of this act: (*a*) insurance companies which pay to the state of West Virginia a tax upon premiums levied under the provisions of chapter seventy-seven of the acts of the legislature of one thousand nine hundred and seven; (*b*) mutual savings banks not having a capital stock represented by shares, and which are operated exclusively for the benefit of their depositors; (c) labor, agriculture and horticultural societies and organizations not operated for profit; cemetery companies which are organized and operated exclusively for the benefit of their members; fraternal benefit societies, orders or associations operating under the lodge system, or for the exclusive benefit of the members of the fraternity itself operating under a lodge system, and providing for the payment of death, sick, accident or other benefits to the members of such societies, orders or associations, and to their dependents; mutual building and loan associations, operated exclusively for the benefit of their members; corporations, associations, or societies organized and operated exclusively for religious, charitable, scientific or educational purposes; business leagues, chambers of commerce, boards of trade, civic leagues, and organizations operated exclusively for the benefit of the community and for the promotion of social welfare; none of which companies, organizations, corporations or societies named in clause (*c*) of this section are organized for profit and no part of the income of which inures to the benefit of any private stockholder or individual.

Sec. 5. The taxes levied hereunder shall be payable in quarterly installments on or before the expiration of thirty days from the end of the quarter in which the tax accrues. The taxpayer shall, within thirty days from the expiration of each quarter, make out an estimate of the tax for which he is liable for such quarter, verify the same by oath, and mail the same together with a remittance in the form required by section thirteen of this act for the amount of the tax, to the office of the state tax commissioner. In estimating the amount of the tax due for each quarter the taxpayer may deduct one-fourth of the total exemption allowed for the year. *Provided, however*, that when the total tax for which any person is liable under this act does not exceed the sum of one hundred dollars in any year, the total amount of said tax shall be payable at the end of the month next following the close of the tax year.

Sec. 6. On or before thirty days after the end of the tax year each person liable for the payment of a tax under section two of this act shall make a return showing the gross proceeds of sales, or gross income of business, and compute the amount of tax chargeable against him in accordance with the provisions of this act, and deduct the amount of quarterly payments, (as hereinbefore provided), if any, and transmit with his report a remittance in the form required by section thirteen of this act covering the residue of the tax chargeable against him to the office of the state tax commissioner; such return shall be verified by the oath of the taxpayer, if made by an individual, or by the oath of the president, vice-president, secretary or treasurer of a corporation if made on behalf of a corporation. If made on behalf of a partnership, joint adventure, association, trust, or any other group or combination acting as a unit, any individual delegated by such firm, co-partnership, joint adventure, association, trust, or any other group or combination acting as a unit shall make the oath on behalf of the taxpayer. If for any reason it is not practicable for the individual taxpayer to make the oath, the same may be made by any duly authorized agent. The tax commissioner, for good cause shown, may extend the time for making the annual return on the application of any taxpayer and grant such reasonable additional time within which to make the same as may, by him, be deemed advisable.

Sec. 7. If the taxpayer shall make any error in computing the tax assessable against him, the state tax commissioner shall correct such error or re-assess the proper amount of taxes, and notify the taxpayer of his action by mailing to him promptly a copy of the corrected assessment, and any additional tax for which such taxpayer may be liable shall be paid within ten days after the receipt of such statement.

Sec. 8. If any person fail or refuse to make a return, the state tax commissioner shall proceed, in such manner as may seem best, to obtain facts and information on which to base the assessment of tax herein prescribed; and to this end he may by himself or his duly appointed agent, make examination of the books, records and papers of any such person, and may take the evidence, on oath, of any person who he may believe shall be in possession of facts or information pertinent to the subject of inquiry, which oath, he or the agent so appointed by him may administer. As soon as possible after procuring such information as he may be able to obtain with respect to any person failing or refusing to make a return, the state tax commissioner shall proceed to assess the tax against such person, and shall notify him of the amount thereof, and his act shall be final as to any person who refused to make a return.

Sec. 9. The tax imposed by this act shall be a lien upon the property of any person subject to the provisions hereof who shall sell out his business or stock of goods, or shall quit business, and such person shall be required to make the return provided for under section six within thirty days after the date he sold out his business or stock of goods, or quit business, and his successor in business shall be required to withhold sufficient of the purchase money to cover the amount of said taxes due and unpaid until such time as the former owner shall produce a receipt from the tax commissioner showing that the taxes have been paid. If the purchaser of a business or stock of goods shall fail to withhold purchase money as above provided and the taxes shall be due and unpaid after the thirty day period allowed, he shall be personally liable for the payment of the taxes accrued and unpaid on account of the operation of the business by the former owner.

Sec. 10. If any person having made the return and paid the tax as provided by this act, feels aggrieved by the assessment so made upon him for any year by the state tax commissioner, he may apply to the board of public works by petition, in writing, within thirty days after notice is mailed to him by the state tax commissioner, for a hearing and a correction of the amount of the tax so assessed upon him by the state tax commissioner, in which petition shall be set forth the reasons why such hearings should be granted and the amount of such tax should be reduced. The board shall promptly consider such petition, and may grant such hearing or deny the same. If denied, the petitioner shall be forthwith notified thereof; if granted, the board shall notify the petitioner of the time and place fixed for such hearing. After such hearing, the board may make such order in the matter as may appear to it just and lawful, and shall furnish a copy of such order to the petitioner. Any person improperly charged with any tax and required to pay the same, may recover the amount paid, together with interest, in any proper action or suit against the state tax commissioner and the circuit court of the county in which the taxpayer resides or is located shall have original jurisdiction of any action to recover any tax improperly collected. It shall not be necessary or the taxpayer to protest against the payment of the tax or to make any demand to have the same refunded in order to maintain such suit. In any suit to recover taxes paid or to collect taxes the court shall adjudge costs to such extent and in such manner as may be deemed equitable.

No injunction shall be awarded by any court or judge to restrain the collection of the taxes imposed by this act, or any part of them, due from any person, except upon the ground that the assessment thereof was in violation of the Constitution of the United States, or of this state; or that the same were fraudulently assessed; or that there was a mistake made in the amount of taxes assessed upon such person. In the latter case no such injunction shall be awarded, unless application shall first have been made to the board of public works to correct the alleged mistake and the board shall have refused to do so, which fact shall be stated in the bill, or unless the complainant shall have paid into the treasury of the state all taxes appearing by the bill of complaint to be owing.

Sec. 11. A tax due and unpaid under this act shall consitute a debt due the state and may be collected by action in debt of assumpsit upon motion for judgment or other appropriate judicial proceeding, which remedy shall be in addition to all other existing remedies; and it shall constitute a lien upon all the property of the taxpayer and the same shall be collected together with an additional five per cent of the amount of the tax, and the costs of collection, if paid within thirty days after the date it was due, and an additional two per cent of the amount of the tax for each succeeding thirty days elapsing before the tax shall have been paid; *provided, however*, that the additional two per cent penalty shall not be applied until a ten-day notice of delinquency shall have been sent to the taxpayer.

Sec. 12. The assessment of taxes herein made and the returns required therefor shall be for the year ending on the thirty-first day of December; *provided, however*, that if the taxpayer in transacting his business, keeps the books reflecting the same on a basis other than the calendar year, he may, with the assent of the tax commissioner, make his annual returns and pay taxes for the year covering his accounting period, as shown by the method of keeping the books of his business.

Sec. 13. The tax imposed by this act shall be in addition to all other licenses and taxes levied by law as a condition precedent to engaging in any business taxable hereunder, except as in this act otherwise specifically provided.

All remittance of taxes imposed by this act shall be made to the state tax commissioner by bank draft, certified check, cashier's check, money order, or certificate of deposit, who shall issue his receipts therefor to the taxpayers and shall pay the moneys into the state treasury to be kept and accounted for as provided by law.

Sec. 14. The secretary of state shall withhold the issuance of any certificate of dissolution or withdrawal in the case of any corporation organized under the laws of this state or organized under the laws of another state and admitted to do business in this state until the receipt of a notice from the state tax commissioner to the effect that the tax levied under this act against any such corporation has been paid or provided for, if any such corporation is a taxpayer under the law, or until he shall be notified by the tax commissioner that the applicant is not subject to pay a tax hereunder.

Sec. 15. It shall be unlawful for any person to refuse to make the return provided to be made in sections five and six of this act; or to make any false or fraudulent return or false statement in any return, with intent to defraud the state or to evade the payment of the tax, or any part thereof, imposed by this act; or for any person to a'd or abet another in any attempt to evade the payment of the tax, or any part thereof, imposed by this act; or for the president, vice-president, secretary or treasurer of any company to make or permit to be made for any company or association any false return, or any false statement in any return required in this act, with the intent to evade the payment of any tax hereunder. And any person violating any of the provisions of this section shall be guilty of a misdemeanor and on conviction thereof shall be fined not more than one thousand dollars or imprisoned not exceeding one year in the county jail or punished by both fine and imprisonment, at the discretion of the court, within the limitations aforesaid. In addition to the foregoing penalties, any person who shall knowingly swear to or verify any false or fraudulent return, or any return containing any false or fraudulent statement, with the intent aforesaid, shall be guilty of the offense of false swearing, and, on conviction thereof, shall be punished in the manner provided by law. Any company for which a false return, or a return containing a false statement as aforesaid shall be made, shall be guilty of a misdemeanor and may be punished by a fine of not more than one thousand dollars. The circuit and criminal courts of the county in which the offender resides, or if a company, in which it carries on business, shall have concurrent jurisdiction to enforce this section.

Sec. 16. The administration of this act is vested in and shall be exercised by the state tax commissioner who shall prescribe forms and reasonable rules of procedure in conformity with this act for making of returns and for the ascertainment, assessment and collection of the taxes imposed hereunder; and the enforcement of any of the provisions of this act in any of the courts of the state shall be under the exclusive jurisdiction of the tax commissioner, who may require the assistance of and act through the prosecuting attorney of any county, and who may, with the assent of the board of public works of the state, employ special counsel in any county to aid the prosecuting attorney, the compensation of whom shall be fixed by and paid only upon the order of said board of public works; but the prosecuting attorney of any county shall receive no fees or compensation for services rendered in enforcing this act in addition to the salary paid by the county to such officer.

Sec. 16-*a*. If any clause, sentence, paragraph, or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Sec. 17. Sections five to seventeen, both inclusive, of chapter three of the acts of the legislature of one thousand nine hundred and fifteen, second extraordinary session, and sections one to five, both inclusive, of chapter six of the acts of the second extraordinary session of the legislature of one thousand nine hundred and seventeen, and chapter seven of the acts of the legislature of one thousand nine hundred and nineteen, extra session, and chapter one hundred and ten, acts of the legislature of one thousand nine hundred and twenty-one, and all other acts and parts of acts inconsistent with the provisions of this act, are hereby repealed. *Provided, however*, that the said sections of the acts of one thousand nine hundred and fifteen, one thousand nine hundred and seventeen and one thousand nine hundred and nineteen shall remain in full force and effect for the assessment and collection of all taxes, and the imposition and collection all penalties, which have accrued or may accrue in relation to any such taxes up to and including June thirtieth, one thousand nine hundred and twenty-one; and *provided, further*, that chapter one hundred and ten, acts of the legislature of one thousand nine hundred and twenty-one shall remain in full force and effect for the assessment and collection of all taxes, and the imposition and collection of all penalties, which have accrued or may accrue in relation to any such taxes up to and including June thirtieth, one thousand nine hundred and twenty-five.

Exhibit: "Quarterly Return."

Form 202—Gross Sales License Tax. This return is to be forwarded to the STATE TAX COMMISSIONER, BOX 1216, CHARLESTON, W. VA. 8-1-25—85M

QUARTERLY ESTIMATED RETURN

IN CONNECTION WITH THE GROSS SALES LICENSE TAX

(THIS RETURN TOGETHER WITH THE AMOUNT OF TAX SHOWN TO BE DUE THEREON MUST BE IN THE HANDS OF THE STATE TAX COMMISSIONER ON OR BEFORE THIRTY DAYS FROM THE END OF THE QUARTER OR WITHIN THIRTY DAYS FROM THE END OF THE PERIOD TO BE COVERED BY THE RETURN.)

1.	FOR USE OF BUREAU ONLY
2.	Date Received
3.	Serial No.
4.	From ..... To .....
5.	Audited by
6.	Amount remitted $
7.	
8.	

For Quarter Ended ....., 192..., or Period

From ....., 192... to ....., 192...

MADE BY

INSERT IN THIS BRACKETED SPACE THE NAME OF THE TAXPAYER, ST. AND NO., CITY OR TOWN, AND STATE (BLANKS WILL BE SENT TO THE ADDRESS GIVEN BELOW)

State fully nature of business conducted in West Virginia: ....

CLASSIFICATION OF TAXPAYER MAKING RETURN
(Be sure to check the class in which you belong.)

Individual	
Corporation	
Partnership	
Association	
Trust	

The taxpayer making this return closes his books on the basis of a fiscal year ending .....

Note: To be filled in only be taxpayers who for special reasons have been permitted to file their returns on the basis of their own fiscal year.

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If a corporation, when incorporated? .....; under the laws of what state? .....; When business begun? .....

If a foreign corporation, when admitted to do business in West Virginia? ..... Did the corporation dissolve or quit business during the period covered by this return? ..... If so, when? ..... Did the corporation change its name during the period covered by this return? ..... If so, old name, ... ; new name, ...

If other than a corporation, when business begun? ..... Did you sell or otherwise dispose of your property, or quit business during the period covered by this return? ..... If so, when? ..... If property sold, to whom? .....

COMPUTATION OF TAX (ESTIMATED)—BUSINESS CONDUCTED IN WEST VIRGINIA

1. ITEM		2. GROSS AMOUNT	3. EXEMPTIONS	4. TAXABLE AMOUNT	5. RATE PER $100.00	6. AMOUNT
A. Gross value production: Coal	1	$	$	$	$0.42	$
Oil	2				1.00	
Natural gas	3				1.85	
Other minerals and timber	4				.45	
B. Gross value manufactures					.21	
C. Gross income—sales	1				.20	
Gross income—wholesalers	2				.05	
D. Gross income: Banks	1				.30	
Steam R. R.'s and pipe lines	2				1.00	
Telephone, telegraph, express, electric light and power companies	3				.60	
Street R. R.'s and other public utilities	4				.40	
E. Gross income, contracting business					.30	
F. Gross income, amusement businesses					1.00	
G. Gross income, all other businesses					.30	
H. Total amount of taxes due						$

OATH

I, ... (Name of Taxpayer), do solemnly swear that the above estimate of tax due the State of West Virginia was based on facts and figures contained in the records of the taxpayer making return, and is believed to be a close approximation of the actual tax due.

SWORN TO and subscribed before me this ..... day of ....., 192....

..... (Name of Taxpayer)

..... Notary Public

[Seal of Officer Taking Affidavit.]

My commission expires on the ..... day of ....., 192.....

..... (Official title, if return is made on behalf of a corporation: President, vice-president, secretary or treasurer, as the case may be.)

(OVER)

INSTRUCTIONS AS TO QUARTERLY ESTIMATED RETURNS

WHO SHALL MAKE QUARTERLY RETURNS UNDER THE GROSS SALES LICENSE TAX LAW

Quarterly estimated returns are required under the law of all individuals, firms, co-partnerships, joint adventures, associations, corporations, trusts, or any other groups or combinations acting as units, whose taxes exceed $100.00 annually. Putting this on the basis of sales the following schedule shows the amount of sales value, sales or gross income the excess of which will require the filing of quarterly estimated returns:

Coal producers,	(See Item A-1, page 1)	$33,810.00
Oil producers,	(See Item A-2, page 1)	20,000.00
Natural Gas producers,	(See Item A-3, page 1)	15,406.00
Producers of other minerals,	(See Item A-4, page 1)	32,223.00
Timber producers,	(See Item A-4, page 1)	32,223.00
Manufacturers,	(See Item B, page 1)	57,620.00
Selling tangible property,	(See Item C-1, page 1)	60,000.00
Wholesalers and jobbers,	(See Item C-2, page 1)	210,000.00
Banks,	(See Item D-1, page 1)	43,334.00
Steam R. R.'s and pipe lines,	(See Item D-2, page 1)	20,000.00
Telephone, telegraph, express, electric light and power companies,	(See Item D-3, page 1)	26,667.00
Street R. R.'s and other public utilities,	(See Item D-4, page 1)	35,000.00
Contracting business,	(See Item E, page 1)	43,334.00
Amusement businesses,	(See Item F, page 1)	20,000.00
All other businesses,	(See Item G, page 1)	43,334.00

All persons engaged in any of the businesses included in the foregoing schedule will be required to file Quarterly Estimated Returns in case the gross value or gross income reported for tax purposes before the deduction of the $10,000.00 annual exemption exceeds the figures shown. Where the taxpayer is engaged in more than one taxable business it will be necessary for him to ascertain by extending the tax whether his taxes will exceed $100.00 annually and subject him to the filing of Quarterly Estimated Returns.

NOTE 1—CONCERNING THE SPECIFIC EXEMPTION

The Act provides a specific exemption at the rate of $10,000.00 to be deducted from the gross value of minerals or timber produced or articles manufactured in the State of West Virginia, or gross income of all other businesses, as shown by the Computation of Taxes on page 1. Each taxable privilege, as listed by the letters from A to G, carries with it the exemption at the rate of $10,000.00 annually, in all seven separate taxable privileges with an exemption as shown above for each. In cases where persons are engaged in more than one business classified under the same Item, the exemption is to be pro-rated in the same proportion as the gross value or gross income of each business. For instance, a person producing $100,000.00 gross value of coal, and $50,000.00 gross value of oil, would pro-rate the $10,000.00 exemption in the proportion of two-thirds, or $6666.66 under A-1, coal production, and one-third, or $3333.33 under A-2, oil production.

Quarterly Estimated Returns, if covering the full three months period, will take an exemption of $2500.00; if less than a full quarter is covered the exemption is to be figured at the rate of $833.33 monthly.

NOTE 2—CONCERNING MANNER OF PREPARATION OF QUARTERLY ESTIMATED RETURNS

ITEM A. Each person engaging or continuing in West Virginia in the business of mining and producing for sale, profit, or use, any coal, oil, natural gas, limestone, sand or other mineral product, or felling and producing timber for sale, profit, or use, shall show under Item A (1 to 4) the estimated aggregate value (gross proceeds of sales, except where no sale is made,) of all mineral products or timber produced.

ITEM B. Each person engaging or continuing in West Virginia in the business of manufacturing, compounding, or preparing for sale, profit, or use, any article or articles, substance or substances, commodity or commodities, shall show under Item B the estimated aggregate value (gross proceeds of sales, except where no sale is made) of all articles, substances or commodities manufactured, compounded, or prepared for sale.

ITEM C. Each person engaging or continuing in West Virginia in the business of selling any tangible property, including sales by wholesalers and retailers, shall show under Item C (1 and 2) the estimated aggregate gross income of the business. (See definition of gross income below).

ITEM D. Each person engaging or continuing in West Virginia in the business of banking, operating a steam railroad, street railroad, pipe line carrying oil or gas, telephone, telegraph, express, electric light or power company, or other public service utility, shall show under Item D (1 to 4) the estimated aggregate gross income of the business. (See definition of gross income below.)

ITEM E. Each person engaging or continuing in West Virginia in the business of contracting shall show under Item E the estimated aggregate gross income of the business. (See definition of gross income below).

ITEM F. Each person engaging or continuing in West Virginia in the business of operating a theatre, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, race track, or any other place at which amusements are offered the public, shall show under Item F the estimated aggregate gross income of the business. (See definition of gross income below).

ITEM G. Each person engaging or continuing in West Virginia in any business not included in the preceding Items shall show under Item G the estimated gross income of the business. (See definition of gross income below).

Note—Gross income is defined under Section 1 of the Act as follows:

> "The term 'gross income' means the value proceeding or accruing from the sale of tangible property (real or personal), or service, or both, and all receipts, actual or accrued, by reason of the investment of the capital of the business engaged in, including interest, discount, rentals, royalties, fees, or other emoluments however designated and without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest or discount paid, or any other expense whatsoever; and without any deduction on account of losses.

WHEN QUARTERLY ESTIMATED RETURNS ARE TO BE FILED

Quarterly estimated returns must be filed with the tax commissioner within thirty days from the close of each quarter. Each return is to be accompanied by certified check, bank draft, cashier's check or money order. NO EXTENSION WILL BE GRANTED FOR THE FILING OF QUARTERLY ESTIMATED RETURNS.

Quarterly Estimated Returns are to be filed as follows:

For the tax year ending December 31:

1. Return is to be filed within 30 days after March 31, to cover the three months ending March 31.
2. Return is to be filed within 30 days after June 30, to cover the three months ending June 30.
3. Return is to be filed within 30 days after September 30, to cover the three months ending September 30.

When the taxpayer for special reasons has applied for and obtained permission to file his returns using his own fiscal year as the tax period, quarterly estimated returns will be due within 30 days after the end of the quarters ending nine, six and three months respectively in advance of the end of the tax year. As for instance,

For the tax year ending January 31:

1. Return is to be filed within 30 days after April 30, to cover the three months ending April 30.
2. Return is to be filed within 30 days after July 31, to cover the three months ending July 31.
3. Return is to be filed within 30 days after October 31, to cover the three months ending October 31.

RULES AND REGULATIONS

Rules and Regulations relating to the Gross Sales License tax have been prepared and issued in pamphlet form by this office and copies thereof will be furnished upon request. Tax payers will refer to these rules in connection with any question as to the tax or the preparation of returns. The undersigned will endeavor to answer promptly any inquiry as to any matter not covered in the promulgated rules.

Respectfully,

GRANT P. HALL,
State Tax Commissioner.

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Exhibit "Annual Return." MADE BY

Form 201—Gross Sales License Tax. This return to be forwarded to STATE TAX COMMISSIONER, BOX 1216, CHARLESTON, W. VA. 8-1-25—85M

STATE OF WEST VIRGINIA—ANNUAL RETURN—GROSS SALES LICENSE TAX

(1) For Year Ended_____(2) or Part Year From_____To_____

(3) Nature of Business Conducted_____

(4) Books of Account are Kept at (Post Office)_____

(5) Principal Place of Business or Chief Works in W. Va._____

(6) Name and Address of Outside Expert (if employed) Preparing Return:_____

THIS RETURN WITH CHECK TO COVER TAXES DUE MUST BE RECEIVED WITHIN 30 DAYS FROM END OF PERIOD COVERED BY THE RETURN

1	
2	
3	
4	
5	
6	
7	
8	

FOR USE OF BUREAU ONLY

Date Received_____

Serial No._____

From_____To_____

Audited by_____

Amount Remitted $_____

Total_____

Am't and Date Assessed_____

Insert name and address and indicate by X the class to which you belong (Blanks will be sent to the address given below)

Individual	
Corporation	
Partnership	
Association	
Trust	

(7) When business begun ?_____

(8) Did you sell or otherwise dispose of your property, or quit business, during period covered by this return ?_____

(9) If so, when ?_____

(10) If business sold, to whom ?_____

(11) If a corporation, when incorporated ?_____; (12) Under the laws of what state ?_____; (13) When business began ?_____

(14) If a foreign corporation, when admitted to do business in West Virginia ?_____(15) Did the corporation dissolve or quit business during the period covered by this return ?_____(16) If so, when ?_____(17) Did the corporation change its name during the period covered by this return ?_____(18) If so, old name_____, (19) New name_____

COMPUTATION OF TAX—BUSINESS CONDUCTED IN WEST VIRGINIA

1. ITEM	2. GROSS AMOUNT	3. EXEMPTIONS	4. TAXABLE AMOUNT	5. RATE PER $100.00	6. AMOUNT
A. Gross value production: Coal 1	$	$	$	$ .02	$
Oil 2				1.00	
Natural gas 3				1.85	
Other minerals and timber 4				.05	
B. Gross value manufacture				.01	
C. Gross income—sales 1				.20	
Gross income—wholesales 2				.05	
D. Gross income: Banks 1				.30	
Steam R. R.'s and pipe lines 2				1.00	
Telephone, telegraph, express, electric light and power Companies 3				.60	
Street R. R.'s and other public utilities 4				.40	
E. Gross income, contracting business				.30	
F. Gross income, amusement business				1.00	
G. Gross income, all other businesses				.30	
H. Total amount of taxes due					

Note: Rates are shown in dollars and cents per $100.00

I. PAYMENTS HERETOFORE MADE ON ESTIMATED RETURNS AS UNDER:

1st Qr. $_____ 2nd Qr. $_____ 3rd Qr. $_____ 4th Qr. $_____ Total $_____

(4th Quarterly return is required only from taxpayers who have applied for and have been granted an extension for the filing of Annual Return.)

J. Remittance enclosed to make up total tax due to go into H_____

K. Total to balance H_____

THIS RETURN MUST BE SIGNED BY OWNER OR PROPRIETOR OR OFFICER OF CORPORATION

THIS RETURN IS NOT COMPLETE UNTIL THE QUARTERLY REPORTS ON SCHEDULES CONSECUTIVELY WITH THIS FORM ARE FILED WITH THE STATE TAX COMMISSIONER AS REQUIRED BY LAW.

ALL SCHEDULES OF THIS RETURN COVER THE PERIOD FROM _____ TO _____

SCHEDULE A. (To be used by Miners and Producers of Coal, Oil, Gas and other Minerals, and Producers of Timber.)

This schedule is to be prepared after COMPUTATION OF TAXES, page 1, has been completed by the making of the proper entries in columns 3 to 6 thereof.

	(1) Total Output in Production Units	(2) Average Price per Unit	(3) AMOUNT Dollars	Cts.
(1) Taxable value, as per column 6, page 1			$	
Add exemptions claimed as per column 3, page 1:				
(2) Specific exemption at rate of $10,000 annually				
(3) Cash discounts if shown on the face of invoices and actually deducted by buyer				
(4) Total output, average price and gross sales proceeds as shown by taxpayer's records (enter 1, 2, 3, the amount in column 3 to be the sum of items 1, 2 and 3 above)				
(5) Freight charges included in Sales Proceeds (See Rule 6-A)				
(6) Total Gross Sales Proceeds (amounts invoiced)				
(7) Output, average price and market value used in manufacturing, etc.				
(8) Total value of minerals or timber produced as per column 2, page 1				

(9) State highest and lowest prices obtained during period _____ Units used, long or short ton, etc. _____

(10) State name of coal mined _____ Grade of oil produced _____ Kind of timber _____

Note—Average price to be based on prices f. o. b. without deduction for selling or other expense, commissions paid agents out of selling price, losses on account of bad debts or other causes.

Note—Report Commissary Business under schedule C; rentals, etc., under schedule G.

SCHEDULE B. (To be used by Manufacturers, Compounders and Persons Preparing Articles for Sale, Profit or Use).

This schedule is to be prepared after COMPUTATION OF TAXES, page 1, has been completed by the making of the proper entries in columns 3 to 6 thereof.

	(1) Total Output in Production Units	(2) Average Price per Unit	(3) AMOUNT Dollars	Cts.
(1) Taxable value as per column 6, page 1			$	
Add exemptions claimed as per column 3, page 1:				
(2) Specific exemption at rate of $10,000 annually				
(3) Cash discounts if shown on the face of invoices and deducted by buyer				
(4) Trade discounts, if allowed and deducted on face of invoices				
(5) Total output, average price and gross sales proceeds, as shown by records of taxpayer (enter 1, 2, 3, the amount in column 3 to be the sum of items 1, 2, 3 and 4 above)				
(6) Freight charges included in taxpayer's invoices to customers (See Rule 6-B)				
(7) Market value of product reported under Item 5 (See Rule 9-C)				
(8) Total Gross Sales Proceeds, as shown by invoices, as per column 2, page 1				

(9) What production unit is used ? _____

(10) If units are not uniform, show production and average price per unit, based on standard production units, if used _____

(11) State highest and lowest price per standard unit obtained _____

Note—Average price to be based on prices f. o. b. factory without deduction for commission or other expense, or losses on account of bad debts or other causes.

SCHEDULE C. (To be used by all Persons engaged in the business of Selling Tangible Property)

This schedule is to be prepared after COMPUTATION OF TAXES, page 1, has been completed by the making of the proper entries in columns 3 to 6 thereof.

	AMOUNT Dollars	Cts
(1) Taxable Gross Income of business, as per column 6, page 1 _____ (See definition of Gross Income, Page 3) _____	$	
Add exemptions claimed as per column 3, page 1:		
(2) Specific exemption at rate of $10,000 annually		
(3) Cash discounts shown on face of invoices and deducted by buyer		
(4) Freight charges included in taxpayers' invoices to customers (See Rule 6-C)		
(5) Trade discounts if allowed and deducted on face of invoices		
(6) Total Gross Income of business, as per column 2, page 1		

ALL SCHEDULES OF THIS RETURN COVER THE PERIOD FROM_____TO_____

SCHEDULE D. (Gross Income (See definition at foot of page 3) of banks, steam railroads, street railroads, oil and gas pipe lines, telephone, telegraph, express, electric light and power companies, and other public utilities).

This schedule is to be prepared after COMPUTATION OF TAXES, page 1, has been completed by the making of the proper entries in columns 2 to 6 thereof.	AMOUNT	
(1) Taxable Gross Income as per column 4, page 1 (See definition of gross income page 3)	$	
Add exemptions claimed, as per column 3, page 1:		
(2) Specific exemption at rate of $10,000 annually		
(3) Cash discounts if shown on face of invoices and deducted by buyer		
(4) Gross Income from interstate business		
(5) Total Gross Income as shown by Taxpayer's records, as per column 2, page 1		

SCHEDULE E. (Gross Income of All Persons Engaged in the business of contracting. (See definition of gross income at foot of page 3).

This schedule is to be prepared after COMPUTATION OF TAXES, page 1, has been completed by the making of the proper entries in columns 2 to 6 thereof.	AMOUNT	
(1) Taxable amount as per column 4, page 1	$	
Add exemptions claimed as per column 3, page 1:		
(2) Specific exemption at rate of $10,000 annually		
(3) Cash discounts if shown on face of invoices and deducted by buyer		
(4) Total Gross Income, as shown by records of Taxpayer, as per column 2, page 1		

SCHEDULE F. (Gross Income—See definition, page 3) of persons engaged in amusement businesses, as defined under the Act. (See Sec. 2-f).

This schedule is to be prepared after COMPUTATION OF TAXES, page 1, has been completed by the making of the proper entries in columns 2 to 6 thereof.	AMOUNT	
(1) Taxable amount as per column 4, page 1	$	
Add exemptions claimed as per column 3, page 1:		
(2) Specific exemption at rate of $10,000 annually		
(3) Cash discounts if shown on face of invoices and deducted by buyer		
(4) Total Gross Income (See definition of Gross Income, page 3) as shown by records of Taxpayer, as per column 2, page 1		

SCHEDULE G. (Gross Income—See definition, page 3) of all persons engaged in businesses not included in the preceding schedules)__

This schedule is to be prepared after COMPUTATION OF TAXES, page 1, has been completed by the making of the proper entries in columns 2 to 6 thereof.	AMOUNT	
(1) Taxable amount as per column 4, page 1	$	
Add exemptions claimed as per column 3, page 1:		
(2) Specific exemption at rate of $10,000 annually		
(3) Cash discounts if shown on face of invoices and deducted by buyer		
(4) Total Gross Income (See definition on page 3) as shown by records of Taxpayer, as per column 2, page 1		

NOTE—Taxpayers required to report under Schedule G comprise businesses consisting (*a*) in the sale of service, such as agencies, brokerage business, home insurance companies, investment companies, renting of real estate, garage rentals, etc., and (*b*) in the sale of service and tangible property combined, such as restaurants, automobile repair business, shoe repairing, dressmaking, etc. Where the business consists in the sale of tangible property and the repairs or other service performed is incidental to the main business, the gross income arising from the service is to be included in the taxable gross income reported under Schedule C—Business of Selling Tangible Property.

"Gross Income," as defined under section 1 of the act, means the value proceeding or accruing from the sale of tangible property (real or personal), or service, or both, and all receipts, actual or accrued by reason of the investment of the capital of the business engaged in, including interest, discount, rentals, royalties, fees, or other emoluments however designated and without any deduction on account of the cost of property sold, cost of materials used, labor costs, interest or discount paid, or any other expense whatsoever; and without any deductions on account of losses.

INSTRUCTIONS AS TO ANNUAL RETURNS
WHO SHALL MAKE ANNUAL RETURNS UNDER THE GROSS SALES LICENSE TAX LAW

(1) All corporations and associations organized and existing under the laws of the State of West Virginia.

(2) All foreign corporations admitted to do business in the State of West Virginia.

(3) All individuals, firms, co-partnerships, joint adventures, trusts or any other group or combination acting as a unit, engaged in business in the State of West Virginia.

Note—Corporations, foreign and domestic associations, individuals, firms, co-partnerships, joint adventures, trusts or any other group or combination acting as a unit engaged in business are required under the Rules and Regulations to make returns regardless of whether their gross value, gross sales proceeds or gross income amount to over $10,000.00 or not, or, in the case of corporations, whether or not any or all of the business is conducted outside of West Virginia.

CONCERNING THE SPECIFIC EXEMPTION OF $10,000.00

In addition to other exemptions provided in the act for certain classes of taxpayers, (See Schedules on page 2 and 3 of this form), a specific exemption at the rate of $10,000.00 annually is allowed each taxpayer, and is to be deducted from his gross proceeds of sales, gross value or gross income, before computation of the tax is made. The application of this exemption depends upon the subject of the tax. Following the act, the subjects of tax, in order, are shown below, under the heading "Concerning Manner of Preparation of Annual Return".

The above exemption is allowable from the gross value, gross sales proceeds or gross income, as the case may be, derived from a full year's business. If the return covers a period of less than a year, the taxpayer is entitled to an exempton of that part of the sum of $10,000.00 which bears the same relation to $10,000.00 as the period of time during which he is engaged in business bears to a full year—in other words, the exemption is $833.33 for each month covered by the return.

CONCERNING MANNER OF PREPARATION OF ANNUAL RETURN

The annual return must show the actual amount of gross value, gross sales proceeds or gross income, as the case may be. The amount reported must be derived from the records of the taxpayer, subject to verification, if deemed necessary by the State Tax Commissioner.

The word "taxpayer," as used below, means any person, (See heading above, "Who Shall Make Annual Returns Under the Gross Sales License Tax Law"), liable for any tax under the Gross Sales License Tax Law.

ITEM A. The privilege of engaging or continuing within this state in the business of mining and producing for sale, profit, or use, any coal, oil, natural gas, limestone, sand or other mineral product, or felling and producing timber for sale, profit, or use.

ITEM B. The privilege of engaging or continuing within this state in the business of manufacturing, compounding or preparing for sale any articles, substances or commodities for sale, profit or use.

ITEM C. The privilege of engaging or continuing within this state in the business of selling any tangible property.

ITEM D. The privilege of engaging or continuing within this state in the business of banking, operating steam railroad, street railroad, oil and gas pipe lines, telephone, telegraph, express, electric light and power companies and other public service companies.

ITEM E. The privilege of engaging or continuing within this state in the business of contracting.

ITEM F. The privilege of engaging or continuing within this state in the business of operating a theatre, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, race track, or any other place at which amusements are offered the public.

ITEM G. The privilege of engaging or continuing within this state in any other business not included in the preceding Items.

WHEN ANNUAL RETURN IS TO BE FILED. The annual return must be made and filed within thirty days from the end of the "tax year". For good cause shown in any particular case the tax commissioner may on application of the taxpayer extend the time for filing the annual return for a reasonable period. In all cases in which the taxpayer for any reason cannot complete and file his annual return within the time prescribed by law, that is, within thirty days from the close of the "tax year", prompt application within said thirty day period should be made to the tax commissioner for an extension of time. Any such application must state fully the reasons why the return cannot be made within the period prescribed by the act. In all cases wherein extensions are allowed for the filing of Annual Returns a fourth quarterly estimated return will be required accompanied by remittance for the estimated amount of taxes due.

Respectfully,

GRANT P. HALL,

State Tax Commissioner.

IF THE SPACE ON THIS RETURN IS INSUFFICIENT TO ENTER ALL PROPER ITEMS OR NOTATIONS, SEPARATE SHEETS CONTAINING THE NECESSARY INFORMATION SHOULD BE ATTACHED; WHEN SO ATTACHED, THEY BECOME A PART OF THIS RETURN

OATH

I, _____, do solemnly swear that the statements and items (both as to designations and amounts), entered in the foregoing return and in the supplementary statement and in any additional list or lists attached to or accompanying this return, are, to the best of my knowledge and belief, true and correct in each and every particular; that the figures thereon reported were taken from the original books, papers and records of the taxpayer making return; and that the person signing the return is thoroughly familiar with the business reported in the return and with the original books, papers and records from which the return was prepared.

Sworn to and subscribed before me this_____day of_____, 192____.

_____
(Name of Taxpayer)

_____
Notary Public

(Seal of Officer Taking Affidavit.)

_____
(Official title, if made on behalf of a corporation: president, vice-president, secretary or treasurer, as the case may be.)

My commission expires on the_____day of_____, 192____.

*478

Exhibit: "Lease."

No.....

Form H 556 5M-2-23

Agreement, Made and entered into the.....day of.....A. D., 192....,

by and between.....

.....

.....of.....County of

.....and State of.....part.....of the first part, hereinafter called the Lessor,

and the HOPE NATURAL GAS COMPANY, a West Virginia corporation, party of the second part, hereinafter called the Lessee.

WITNESSETH, That the said Lessor, for and in consideration of the sum of One Dollar to.....in hand well and truly paid by the said Lessee, the receipt of which is hereby acknowledged, and of the covenants, and agreements hereinafter contained on the part of the said Lessee, to be paid, kept and performed, has granted, demised, leased and let and by these presents does grant, demise, lease and let, with covenants of quiet possession and sole right to convey, unto the said Lessee, for the sole and only purpose of mining and operating for oil and gas, and of laying and maintaining pipe lines, and drips, and of building tanks, stations, telephone, telegraph and electric power lines, houses for gates, meters and regulators, with all other rights, privileges, appliances and structures necessary,

incident or convenient for the operation of this land, ALL that certain tract of land situate in.....

.....District.....County, and State of West Virginia,

on the waters of.....bounded substantially as follows:

On the North by lands of.....

On the East by lands of.....

On the South by lands of.....

On the West by lands of.....

Containing.....acres, more or less,

reserving, however.....feet from the.....building.....now on the premises, on which

no well shall be drilled by either party except by mutual consent.

All of the working interest (⅞ths) oil and all of the gas produced under the terms of this lease is hereby granted unto the said Lessee, free from incumbrance and with covenants of general warranty.

It is agreed that this lease shall remain in force for the term of ten years from this date, and as long thereafter as the said land is operated by the Lessee in the search for or production of oil or gas, with the extension of term by payment of rentals as hereinafter set forth.

In Consideration of the Premises the said Lessee covenants and agrees: 1st—To deliver to the credit of the Lessor, ...

heirs or assigns, free of cost, in the pipe line to which said Lessee may connect its wells, a royalty of the equal one-eighth(⅛) part of all oil produced and saved from the leased premises; 2d—To pay a royalty of Seventy-five ($75.00) Dollars each three months in advance for the gas from each and every well producing gas only drilled on said premises, payable within thirty days after the completion of the well and each three months thereafter, until the Lessee shall give written notice to the Lessor of its intention to abandon the well,

or shall, in fact, plug and abandon the same; and 3d—To pay a royalty of Fifty ($50.00) Dollars each year in advance, for the gas produced from each and every well producing both oil and gas drilled on said premises, payable within thirty days after commencing to use or market the gas off the premises, and thereafter from year to year while the gas from such well is used or marketed off said premises.

Said Lessee shall not be required in any event to increase the rate of said gas well payments or said royalty of oil or the delay rental payments hereinafter provided by reason of any royalty or interest in said oil or gas that may have been heretofore sold, reserved or conveyed by said Lessor or.....predecessors in title or otherwise; and if the Lessor does not have title to all the oil and gas in the leased premises, there shall be refunded such part of all delay rental and gas well payments made by the Lessee under this lease, as shall be proportionate to the outstanding title, and payments thereafter to be made for such purposes shall be reduced in the same proportion.

The leased premises may be fully and freely used by the Lessor for farming purposes, excepting such parts as are used by the Lessee in operating hereunder.

The said Lessee covenants and agrees to pay a rental at the rate of.....($.....)

dollars quarterly in advance, beginning in.....months from this date, until a well yielding royalty to the Lessor is drilled on the leased premises; any rental paid for time beyond the date of completion of a gas well shall be credited upon the first royalty due upon the same; upon the drilling of a well yielding no royalty to the Lessor, the Lessee may continue to hold the leased premises for such further term as the Lessee may desire upon the payment of said rental, not exceeding the term of five years after the expiration of the term above mentioned and as long thereafter as oil or gas is produced.

It is agreed that said Lessee may drill or not drill on said land, as it may elect, and that the consideration and rentals paid and to be paid constitute adequate compensation for such privilege.

All payments hereunder may be made direct to the Lessor, or deposited to.....credit or the credit of.....

respective heirs or assigns in....., or by check

payable and mailed to.....at.....

Post Office.....County, State of West Virginia, or in any of said methods to

.....who is hereby appointed agent to receive and receipt for the same.

Lessor may lay a line to any gas well on said land or to second party's pipe line leading from said well to market, to take gas produced from said well for.....own use for heat and light in one dwelling house on said land at Lessor's own risk, subject to the use, operation, pumping and right of abandonment of the well and pipe line by the Lessee; the first two hundred thousand cubic feet of gas so taken in each year shall be free, but all gas in excess of two hundred thousand cubic feet taken in each year shall be paid for by the Lessor at the current published local rates of the Lessee, and measurement and regulation shall be by meter and regulators set at the tap on the well or line. This privilege is upon condition that the Lessor shall use said gas with economy, in safe and proper pipes and appliances, and shall subscribe to and be bound by the reasonable rules and regulations of the Lessee published at such time relating to such use of gas.

.....

.....

.....

.....

It is agreed that said Lessee is to have the privilege of using sufficient water and gas from the said premises to run all machinery necessary for drilling and operating thereon, and at any time to remove all machinery and fixtures placed on said premises; and further,

upon the payment of.....($.....) dollars at any time, by said Lessee, to the Lessor, or to the above named agent, said Lessee shall have the right to surrender this lease to them or either of them for cancellation, after which all payments and liabilities thereafter to accrue under and by virtue of its terms shall cease and determine, and this lease become absolutely null and void. Lessor agrees that the recordation of a deed of surrender in the proper county, and the mailing in the Post Office of a check payable as above provided, for said last mentioned sum and all amounts then due hereunder, shall be and be accepted as full and legal surrender of the Lessee's rights under this lease.

All terms, conditions, limitations and covenants between the parties hereto shall extend to their respective heirs, successors, personal representatives and assigns.

In Witness Whereof the parties to this agreement have hereunto set their hands and seals the day and year first above written.

Witness:

.....[SEAL]

.....[SEAL]

.....[SEAL]

.....[SEAL]

.....[SEAL]

HOPE NATURAL GAS COMPANY

By.....

Vice-President.

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STATE OF WEST VIRGINIA,
COUNTY OF.....

To-Wit: I,.....

a.....of said County of.....do certify that

.....and.....

his wife, whose name.....signed to the within writing, bearing date the.....day of

.....A. D., 192.....ha.....this day acknowledged the same before

me in my said County.

Given under my hand this.....day of.....A. D., 192.....

My Commission expires.....

.....

STATE OF WEST VIRGINIA,
COUNTY OF.....

To-Wit: I,.....

a.....of said County of.....do certify that

.....and.....

his wife, whose name.....signed to the within writing, bearing date the.....day of

.....A. D., 192.....ha.....this day acknowledged the same before

me in my said County.

Given under my hand this.....day of.....A. D., 192.....

My Commission expires.....

.....

No.....

OIL AND GAS LEASE

FROM

.....

.....

TO

HOPE NATURAL GAS COMPANY

Date.....192.....

Term, Ten Years.

No. Acres.....

LOCATION

.....

District.....

County.....

Received for Record.....192.....

Recorded.....192.....

In Book.....Page.....

.....

.....

MAP LOCATION

N.....S.....E.....W.....

EXAMINED BY.....

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Exhibit: "Form of Return [illegible]"

Exhibit: "Form of Return to the Board of Public Works."

ALL QUESTIONS ON THIS SHEET MUST BE ANSWERED

Form No. 1-U.

A part of the report of the ..... Company

1. Name of company making this report.....

2. Nature of company, whether person or persons, association or corporation.....

.....

3. Organized under the laws of what state.....

.....

4. Location of Principal Office.....

.....

5. Location of Principal Place of Business in West Virginia .....

.....

6. Name of President and his address in full.....

.....

7. Name of Secretary and his address in full.....

.....

8. Name of General Manager and his address in full.....

.....

9. Name of Chief Officer or Managing Agent in W. Va., and his address in full.....

.....

10. Name of Tax Agent and his address in full.....

.....

11. Name and full address of officer to whom correspondence regarding this report should be addressed.....

.....

(Name) (Title) (Address)

12. Date of annual meeting of stockholders.....

13. The books of the Company are closed for the year on what date? .....

14. If a consolidated company, name the constituent companies .....

.....

REMARKS

Number the pages of your report. This is

PAGE 1

ALL QUESTIONS ON THIS SHEET MUST BE ANSWERED

Form No. 2-U.

A part of the report of _____ Company

What is the amount of the authorized capital stock? _____ $ _____
How much of the capital stock has been issued? _____ $ _____
How many shares of common stock issued? _____
How many shares of preferred stock issued? _____
What is the par value, per share, of the common stock? _____ $ _____
What is the par value, per share, of the preferred stock? _____ $ _____
What is the market value, per share, of the common stock? _____ $ _____
What is the market value, per share, of the preferred stock? _____ $ _____
If stock is not on the market, at what is it valued per share? _____ $ _____
How much of the stock was paid for in cash? _____

What was the consideration for stock issued, but not paid for in cash? _____

If any part of the stock was not paid for in cash, was the consideration equivalent to cash? _____

How much bonus stock, if any, was issued? _____ $ _____

If stock is not worth par, how do you account for the fact that it is not? _____

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FUNDED DEBT

FOR WHAT ISSUED	Date of Maturity	Principal Outstanding Dollars	Rate of Interest	Total Market or Actual Value on December 31 Dollars
Totals				

UNFUNDED DEBT

FOR WHAT INCURRED				Amount
Totals				

Accounts receivable, December 31 _____ $ _____

This company began business or was acquired by the present owners or operators _____ (month) _____ (day) _____ (year) _____

Investment (By present owners)

Stock issued (money value)	$	
Amount realized from sale of bonds	$	
Earnings put into plant	$	
	$	

Total investment in one entire plant _____

What is the actual cost of that part of the plant which is situate in West Virginia including property of all kinds? _____ $ _____

What would be the approximate cost of reproducing the entire plant now? _____ $ _____

What would be the approximate cost of reproducing that part of the plant which is situated in West Virginia? _____ $ _____

What is the cash value of the entire plant as shown by the books of the Company? _____ $ _____

What is the value of that part of the plant situate in West Virginia, as shown by the books of the Company? _____ $ _____

Form No. 25

A part of the report of _____ Company

What were the total gross earnings (including all sums earned or charged, whether actually received or not, and the proportion of the gross receipts for business done by it in connection with other companies or firms), of the Company, Copartnership, Association or Corporation making this report, for the year ending

December 31, _____ in all States? _____ $ _____

_____ in West Virginia _____ $ _____

How much of the gross earnings resulted from business actually done in West Virginia _____ $ _____

How much of the total gross earnings should properly be Credited to West Virginia to give the state a fair share of earnings? _____ $ _____

If this company operates outside West Virginia, how, or upon what principle were the earnings apportioned, as between this state and other states? _____

_____

_____

_____

What were the total operating and maintenance expenses, including interest and taxes in all states? _____

What were the total operating and maintenance expenses, including interest and taxes in West Virginia? _____

"Operating and maintenance expenses" are to be understood to mean the actual expenses of operation, and actual expenditures for maintenance. Expenditures for new work (Permanent improvements and additions), and dividends are not to be included as operating expenses.

If this company operates outside of West Virginia, how, or upon what principle were the operating expenses apportioned as between this state and other states? _____

_____

_____

_____

What were the net earnings in all states, for the year ending December 31? $ _____

What were the total net earnings in West Virginia, for the year ending December 31? $ _____

What dividends were declared during the year on common stock? _____ per cent,

Amount _____ $ _____

What dividends were declared during the year on preferred stock? _____ per cent, amount $ _____

When were the dividends declared on common stock? _____

When were the dividends declared on preferred stock? _____

What amount of interest was paid on Funded Debt during the year? $ _____

What amount of interest was paid on Unfunded Debt during the year? $ _____

(There should appear on each sheet of the report some notation to indicate that the information desired on questions asked have not been overlooked. The word "none" may be used against any particular item or items, where the word expresses the facts. If, for any reason, the exact amount cannot be reported such an amount as is approximately correct must be reported. In such case, refer by note to "remarks" at the bottom of the sheet on which a deviation occurs, where a brief explanation should be given why specified data called for cannot be returned exactly as requested.)

REMARKS

Form No. 3-U-A

Gas and Oil

A part of the report of the _____ Company

THE OPERATING AND MAINTENANCE AND OTHER EXPENSES as shown below should not include expenditures for additions to plant, dividends or depreciation.

Operating and Maintenance Expenses, Interest, etc., for the year ending December 31, (Fully Itemized).	Entire Plant	West Va.
General Expenses:		
Salaries and Expenses of General Officers	$	$
Salaries and Expenses of General Office Employees		
Miscellaneous Expenses of General Office (Office supplies, Etc.)		
Legal Expenses		
Prospecting and Lease Expenses:		
Salaries		
Purchase of Leases		
Rental of Leases		
Drilling unproductive Wells		
Production Expenses:		
Superintendence and Salaries		
Royalties		
Operating Gas Wells		
Operating Oil Wells		
Repairs to Gas Wells		
Repairs to Oil Wells		
Transportation Expenses:		
Superintendence and Salaries		
Operating Transportation Lines		
Operating Pump Stations		
Operating Pressure Stations		
Repairs of Transportation Lines		
Repairs of Pumping Station Equipment		
Carried Forward to Form No. 3U-A—Continued		

Gas and Oil.

A part of the report of.....

Brought forward from Form No. 3 U-A	$	$
Taxes:		
General Property Taxes		
License or Charter Taxes		
State Excise Tax		
Federal Income Tax		
Miscellaneous Taxes		
Interest and Discount:		
On Bonds and other Funded Debt		
On Unfunded Debt		
Gas Purchased		
Miscellaneous Expense which can not be set out under the above headings: (Fully itemize). Do not combine items if by so doing the total to be entered on any line is in excess of $5000.) (Companies whose total expense for operation and maintenance does not exceed $5000, may itemize all of such expense hereunder if desired instead of using the form above.)		
Totals		

What amount, if any, should be charged off for depreciation ..... $ ..... $.....

What is considered a fair rate of depreciation?..... % ..... %.....

What reason can be assigned for a charge-off for depreciation, considering the maintenance expense set out above?.....

.....

.....

Form No. 4-U.

A part of the report of..... Company

All expenditures for additions and new work during the year for which this report is made should be reported hereon. If, for any reason, the exact amount expended cannot be reported, such an amount as is approximately correct should be reported. If there have been no such expenditures the word "None" should be written in the columns headed "Entire Plant" and "In West Va."

PERMANENT IMPROVEMENTS Expenditures for additions and new work for the year ending December 31. itemized, and do not include any part of the amount reported as operating and maintenance expense	ENTIRE PLANT		IN WEST VA.	
	Dollars	Cts.	Dollars	Cts.
Total				

227

orm No. 5

GAS AND OIL.

A part of the report of..... Company

This sheet is intended to show the size, length and time in use, only, of the pipe line owned, leased, or operated by the company making this report.

A complete statement showing the different sizes of pipe, the number of miles of each size and the average time in use, should be made on this sheet. Nothing else should be reported hereon.

SIZE	MILES IN WEST VIRGINIA	MILES OUTSIDE WEST VA.	TIME USED

228

TOTAL MILEAGE ....

Form No. 6

GAS AND OIL

A part of the report of..... Company

How many acres of undeveloped gas leases are controlled by the Company making this report?

Total in all states.....

In West Virginia.....

How many acres of developed gas leases?

Total in all states.....

In West Virginia.....

How many producing gas wells were owned at the beginning of the year?

Total in all states.....

In West Virginia.....

How many producing gas wells were drilled during the year?

Total in all states.....

In West Virginia.....

How many "dry" wells were drilled during the year?

Total in all states.....

In West Virginia.....

How many gas wells were purchased during the year?

Total in all states.....

In West Virginia.....

How many gas wells were abandoned during the year?

Total in all states.....

In West Virginia.....

How many gas wells were sold during the year?

Total in all states.....

In West Virginia.....

How many producing gas wells were owned December 31st?

Total in all states.....

In West Virginia.....

How many gas wells were in use December 31st?

Total in all states.....

In West Virginia.....

What was the average rock pressure of gas wells owned for the year?

Total in all states.....

In West Virginia.....

What was the total daily capacity, December 31, of the gas wells owned?

Total in all states.....

In West Virginia.....

What was the total average daily delivery of gas, from wells owned, for the year?

Total in all states.....

In West Virginia.....

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Form No. 6-A.

Gas and Oil

A part of the report of _____ Company

If this company sells gas directly to consumers, how many does it supply?

Total number in all states

Industrial _____

Domestic _____

In West Virginia

Industrial _____

Domestic _____

To what cities and towns is gas supplied? _____

To what gas companies, if any, is gas sold? _____

How many cubic feet of gas were sold during the year? _____

Total in all states _____

To other gas companies

Name of company _____

To industrial consumers _____

To domestic consumers _____

In West Virginia

To other gas companies

Name of Company _____

To industrial consumers _____

To domestic consumers _____

What was the average price per thousand cubic feet received for gas sold during the year?

Total in all states _____

To other gas companies

Name of Company _____ cents

cents

cents

cents

cents

cents

To industrial consumers _____ cents

To domestic consumers _____ cents

In West Virginia _____ cents

To other gas companies

Name of Company _____ cents

cents

cents

cents

cents

cents

To industrial consumers _____ cents

To domestic consumers _____ cents

Gas and Oil.

A part of the report of ..... Company

If this company purchases gas, from whom or what company or companies does it purchase?.....

.....

.....

If this company purchases gas, how many cubic feet were purchased during the year?.....

Total number in all states.....

From other gas companies.

Name of Companies.

.....

.....

.....

.....

From all other sources.....

Total in West Virginia.....

From other gas companies.

Name of Companies.

.....

.....

.....

.....

From all other sources.....

If this company purchases gas, what was the average price per thousand cubic feet paid for same?

Total number in all states..... .....cents

To other gas companies.

Name of Companies.

..... "

..... "

..... "

..... "

To other persons or individuals..... "

In West Virginia ..... "

To other gas companies.

Nam of Companies.

..... "

..... "

..... "

..... "

To other persons or individuals..... "

If this company has pipe lines leading from this state to other state, give the number of such lines, and the size of pipe used and the quantity of gas piped, for the year ending December 31st.

Number	Size of Pipe.	No. cubic feet piped.	State to which piped.

If this company has pipe lines leading from other state to this state, give the number of such lines, and size of pipe used and the quantity of gas piped, for the year ending December 31st.

Number	Size of Pipe.	No. cubic feet piped.	State from which piped.

Does this company pipe gas through its lines for other persons or companies? .....

.....

Does this company own any real estate which is used in connection with its gas business?.....

.....

If so, of what does it consist?.....

.....

GAS AND OIL

A part of the report of ..... Company

How many acres of undeveloped oil leases are controlled by the company making this report?

Total .....

In West Virginia.....

How many acres of developed oil leases?

Total .....

In West Virginia.....

How many producing oil wells were owned at the beginning of the year?

Total .....

In West Virginia.....

How many producing oil wells were drilled during the year?

Total .....

In West Virginia.....

How many oil wells were abandoned during the year?

Total .....

In West Virginia.....

How many producing oil wells were owned December 31?

Total .....

In West Virginia.....

What was the total average daily production of oil for the year immediately prior to the year for which this report is made?

Total .....

In West Virginia.....

What was the total average daily production of oil for the year for which this report is made?

Total .....

In West Virginia.....

What was the total production of oil for the month of December?

Total .....

In West Virginia.....

What was the total production of oil for the year for which this report is made?

Total .....

In West Virginia.....

What was the average price per barrel received for oil sold during the year?

Total .....

In West Virginia.....

Does this company transport oil through its pipe lines for other persons or companies?

Total .....

In West Virginia.....

How many barrels of oil were transported through the pipe lines of this company during the year for which this report is made, for other persons or companies?

Total .....

In West Virginia.....

What was the total number of barrels of oil transported through the pipe lines of this company during the year for which this report is made?

Total .....

In West Virginia.....

What does this company charge for transporting oil through its pipe lines.....

A part of the report of ..... Company

On this sheet and on the following sheets designated "Form No. 8-U.—Continued" a complete itemized list, together with the true and actual value of each item listed, of all property, both tangible and intangible, including all money, credits and investments, owned or operated in this state, by the company making this report, must be given. This property must be listed by counties, magisterial districts, independent school districts and municipalities.

A part of the report of the..... Company

EXPLANATORY REMARKS

State of.....
} ss:
County of.....

I, THE UNDERSIGNED..... .....
Name of Officer Official Title

of the.....Company, on my oath say that the return as shown on this and the foregoing pages of this report, has been prepared from the original books, papers and records of said Company, that I have carefully examined the same, and declare the same and each page thereof to be a complete and correct statement of the business and affairs of said Company in respect to each and every matter and thing therein set forth, and that all property has been reported at its True and Actual Value, to the best of my knowledge, information and belief; the words "true and actual value" being understood by me to mean that price for which the before mentioned property would sell if voluntarily offered for sale upon such terms as such property is usually sold and not the price which might be realized if said property was sold at a forced sale, and that there have been no expenditures for "additions and new work" either within or without the State of West Virginia except as shown on Form No. 4-U. of this report; and that the foregoing return includes all property owned, leased or operated in the State of West Virginia by said Company during the period for which said return is made.

.....

.....
Official Title

Subscribed and sworn to before me this.....day of....., 192.....

.....

.....
Notary Public.

(The return must be verified on the oath of the President, Vice-President, Secretary or Principal Accounting Officer.)

[fol. 235] EXHIBIT "TABULATION No. 1"

Hope Natural Gas Company

Statement of Gas Wells, Operated and Unoperated Acreage, Compressing Stations, Horse Power, etc., Showing Locations in West Virginia as of December 31, 1925

County	No. of gas wells	Operated acreage	Unoperated acreage	Real estate included in unoperated acreage	Compressing stations	
					Name	Capacity, H. P.
Barbour	10	1,976	59,427 61			
Braxton	39	5,666	37,394 45	9 70	Hoover	1,000
Brooke	3	629	550 148	148		
Boone			12 824	12 824		
Calhoun	168	18,073 62	85,438 27	54 12	Cabot	4,500
"					Russett	240
Clay	1	309	14,903			
Doddridge	371	33,166 17	19,549 006	19 791	Cold Water	160
"					Deep Water	155
"					Schutte	1,500
"					Smithburg	2,000
Gilmer	242	26,250 23	42,670 221	184 931	Cox's Mill	60
"					Jones	2,200
"					Payne	1,500
"					Tanner	220

Statement of Gas Wells, Operated and Unoperated Acreage, Compressing Stations, Horse Power, etc.—Continued

County	No. of gas wells	Operated acreage	Unoperated acreage	Real estate included in unoperated acreage	Compressing stations	
					Name	Capacity, H. P.
[fol. 236]						
Harrison	849	71,227 745	41,736 88	54 52	Bridgeport	750
"	...	....	.....	.....	Bristol	160
"	...	....	.....	.....	Davis	1,750
"	...	....	.....	.....	Goff	1,000
"	...	....	.....	.....	Lightburn	600
"	...	....	.....	.....	Marts	2,000
"	...	....	.....	.....	Milford	3,000
"	...	....	.....	.....	Peora	1,600
"	...	....	.....	.....	Sardis	3,000
"	...	....	.....	.....	Wallace	645
"	...	....	.....	.....	West Fork	80
"	...	....	.....	.....	Wolf Summit	1,000
Kanawha	...	....	.....	.....	Stonewall-Jackson	6,000
"	...	....	51 624	51 624	J. J. Cornwell	5,000
Lewis	361½	36,543 21	42,790 354	14 624	Cove Lick	1,800
"	...	....	.....	.....	Fink	1,500
"	...	....	.....	.....	Weston	945
Marion	248	19,397 10	12,792 618	91 608	Gallagher	2,600
"	...	....	.....	.....	Hawkins	770

[fol. 237]

Marion	...	....	.....	.....	Kinsey	80
"	...	....	.....	.....	Wright	3,800
Marshall	40	4,335	4,366.86	2.86	.....	.....
Monongalia	95	7,617.97	6,405.55	2.23	Indian Creek	280
"	...	....	.....	.....	Lemley	140
Nicholas	...	....	245	.....	.....	.....
Pleasants	19	2,169	2,172.83	33	Schultz	500
Preston	...	....	.....	.....	.....	.....
Ritchie	292	27,080.19	51,282.495	43.475	Craig	2,850
"	...	....	.....	.....	Ellenboro	100
"	...	....	.....	.....	Harrisville	60
Roane	...	....	1,113	.....	Jack Evans	1,000
Taylor	13	1,993	21,714.76	.....	.....	.....
Tyler	113	7,911.27	8,975.74	6.59	Centerville	1,000
Upshur	2	212	25,161	.....	.....	.....
Wetzel	284	40,826.17	26,030.196	233.761	Hastings	22,025
Wirt	6	772.50	8,512.47	.....	.....	.....
Wood	...	....	1,158.486	1.266	.....	.....
Totals	3,156½	306,155.175	514,455.392	784.402		79,570

[fol. 238]

EXHIBIT TABULATION No. 2

Hope Natural Gas Company

Trunk Lines December 31st, 1925

No.	Size, inches	Length, feet	Approx. total miles	From	To	County
1	8	18,029	3.4	Hastings Sta.	H-13	Wetzel.
2	10	18,120	....	.....	.....	Wetzel.
..	12	13,611	....	.....	.....	Marshall.
..	18	141,128	28.1	Hastings Sta.	Round Bottom	.....
3	10	6,083	....	.....	.....	Wetzel.
..	12	8,304	....	.....	.....	Marshall.
..	18	100,564	20.2	Hastings Sta.	Clarington	.....
4	10	8,536	....	.....	.....	.....
..	12	15,330	....	.....	.....	Wetzel.
..	16	475	....	.....	.....	Marshall.
..	20	100,544	20.5	Hastings Sta.	Clarington	Harrison. Doddridge.
5	18	155,249	29.4	Hastings Sta.	H-32	Tyler.

[fol. 239]

						Wetzel.
6	12	8,696	....	.....	.....	Wetzel.
..	16	83,349	16.6	Hastings Sta.	Brave Line	Harrison.
7	16	117,640	....	.....		Doddridge.

	18	4,784	23.2	Hastings Sta.	Morrison	Wetzel.
8	12	68,089	12.9	Hastings Sta.	Brinkmier	Marshall. Wetzel.
9	8	70,974	13.4	Hastings Sta.	Haines Frm.	Wetzel. Tyler.
10	8	67,642	12.8	Hastings Sta.	Smith Frm.	Wetzel. Tyler.
11	8	7,878	1.5	H-12	6″ Lines	Marshall.
12	10	21,456	4.1	Brinkmier	H-11	Marshall.
13	10	107,771	20.4	Wright Sta.	H-1	Marion. Wetzel.
14	10	25,400	4.8	Schutee Sta.	Lyons	Doddridge.
[fol. 240]						
15	8	82,526	15.6	Schutte, Sta.	H-45	Doddridge.
16	10	23,167	4.4	Wright Sta.	Koon Frm.	Marion.
17	16	163,987	31.1	Morrison	Brave	Harrison. Marion. Monongalia. Harrison.
18	10	62,655	11.9	Fink Sta.	Stuttler Jct.	Lewis.
19	8	6,418	1.2	H-28	6″ Lines	Harrison.
20	8	10,129	1.9	Davis Sta.	H-42	Harrison.
21	10	13,042	2.4	Cove Lick Sta.	H-23	Lewis.
23	8	16,025	3.0	H-21	H-78	Lewis.
24	10	60,495	11.5	Cove Lick Sta.	Hoover Sta.	Lewis. Braxton. Wetzel.

Trunk Lines December 31st, 1925—Continued

No.	Size, inches	Length, feet	Approx. total miles	From	To	County
25	10	60,813	11.5	Glover	Rymer	Marion.
26	8	5,016	.9	Edwards Frm.	6″ Lines	Lewis. Marion.
[fol. 241]						
27	10	85,149	16.1	Rymer	Bula	Monongalia. Harrison.
28	10	98,605	18.7	Morrison	Morgan	Marion.
29	8	26,534	5.0	Bula	6″ Lines	Monongalia.
31	8	9,721	1.8	H-44	Wells	Doddridge.
32	12	86,523	....	.....	.....	Harrison.
..	16	13,907	....	.....	.....	Lewis.
..	18	6,838	20.3	H-5	Roanoke	.....
33	8	6,835	1.3	H-13	6″ Lines	Marion.
34	10	23,125	4.4	H-88	H-41	Harrison.
35	10	23,790	4.5	H-28	H-58	Harrison.
36	8	6,520	1.2	H-35	6″ Lines	Harrison.
37	10	15,123	2.9	Lightburn Sta.	H-41	Harrison.
38	8	3,381	.6	Lightburn Sta.	Wells	Harrison. Marion.
39	12	82,676	15.7	Hawkins Sta.	Wade	Monongalia.
41	10	11,561	2.2	H-37	Milford Sta.	Harrison.

[fol. 242]						
42	8	2,146	....	.....	.....	Doddridge.
..	10	1,497	....	.....	.....	Lost Creek.
..	12	108,798	21.3	Schutte Sta.	Lost Creek	.....
44	10	55,371	10.5	Schutte Sta.	Smithburg Sta.	Doddridge. Wetzel. Tyler.
45	16	110,400	....	.....	.....	Doddridge.
..	20	125,820	44.7	Hastings Sta.	Cove Lick Sta.	Lewis.
46	10	13,970	2.6	H-42	6" Lines	Harrison.
47	8	9,618	1.8	H-27	6" Lines	Marion.
48	10	19,571	3.7	H-45	H-57	Tyler. Tyler.
49	8	17,429	3.3	H-45	H-57	Doddridge.
50	10	40,525	7.7	Peora Sta.	H-77	Harrison.
51	8	35,023	....	.....	.....	Pleasants.
..	10	59,689	17.8	Schultz Sta.	Marietta	Wood. Pleasants.
[fol. 243]						
52	10	84,692	16.1	Schultz Sta.	Parkersburg	Wood. Pleasants.
53	8	24,129	4.6	Schultz Sta.	6" Lines	Ritchie. Pleasants.
54	8	58,358	11.1	Schultz Sta.	Field Lines	Ritchie. Pleasants. Ritchie.

Trunk Lines December 31st, 1925—Continued

No.	Size, inches	Length, feet	Approx. total miles	From	To	County
55	10	254,554	48.2	Schultz Sta.	Minnora	Calhoun. Ritchie. Calhoun.
56	8	86,362	....	Craig Sta.	.....	Wirt.
..	10	11,610	18.6	.....	Federal Cont.	Roane. Tyler. Doddridge.
57	8	12,000	....	.....	.....	Ritchie.
..	12	161,654	32.9	Centerville Sta.	Newberne	Gilmer.
58	10	31,275	5.9	H-35	Wells	Harrison.
[fol. 244]						
59	8	26,946	....	.....	.....	Harrison.
..	10	2,200	5.5	Davis Sta.	H-112	Lewis.
61	10	1,193	....	Cove Lick Sta.	6" Lines	Lewis. Harrison.
62	8	7,128	....	Lightburn Sta.	H-64	Lewis.
..	10	7,873	2.8	.....	.....	.....
63	10	23,311	4.4	Marts Sta.	H-76	Harrison.
64	8	12,351	2.3	H-62	H-59	Lewis.
66	16	5,870	....	.....	.....	Monongalia.
..	20	228	1.1	Bula	Brave Sta.	.....
						Tyler.

67	8	42,671	8.1	H-57	Carter Oil Cont.	Ritchie.
68	10	70,070	13.4	Craig Sta.	H-57	Ritchie.
69	10	15,336	3.0	Schutte Sta.	Riffee Frm.	Doddridge.
70	8	19,298		.	.	Harrison.
	10	13,298	6.2	Davis Sta.	Berlin	Lewis.
71	10	17,177	3.3	H-50	Barnes Frm.	Harrison.
[fol. 245]						
72	10	8,290	1.6	Peora Sta.	Wells	Harrison.
73	10	31,111	5.9	Sardis Sta.	Wallace Sta.	Harrison.
75	10	5,113	1.0	Milford Sta.	6" Lines	Harrison.
76	10	12,872	2.4	Lightburn Sta.	H-63	Harrison.
77	10	19,684	3.7	Bridgeport Sta.	H-50	Harrison.
78	8	6,080	1.1	H-23	6" Lines	Lewis.
79	10	6,141	1.1	Bula	State Lines	Monongalia.
80	10	23,918	4.5	Bridgeport Sta.	6" Lines	Harrison.
81	12	40		.	.	.
	16	4,368		.	.	Wetzel.
	20	2,242	1.2	Loop around Hastings Sta.		
82	8	4,242	.8	H-75	6" Lines	Harrison.
83	10	491	.09	Wolf Summit Sta.	H-42	Harrison.
84	10	432	.08	Fink Sta.	H-18	Lewis.
85	10	304	.06	Fink Sta.	H-45	Lewis.
86	8	13,165	2.5	H-2264	H-2662	Lewis.
87	10	2,755	.5	Wolf Summit Sta.	6" Lines	Harrison.
[fol. 246]						
88	10	39,519	7.5	Wolf Summit Sta.	H-76	Harrison.
89	8	1,549	.3	Wolf Summit Sta.	6" Lines	Harrison.

Trunk Lines December 31st, 1925—Continued

No.	Size, inches	Length, feet	Approx. total miles	From	To	County
90	10	1,993	4	Bridgeport Sta.	H-80	Harrison.
91	10	1,976	4	Bridgeport Sta.	H-77	Harrison.
						Gilmer.
93	8	8,343	1.6	H-24	Cont. 274	Braxton.
						Doddridge.
94	10	20,715	3.9	Martz Sta.	Richards Frm.	Harrison.
95	10	11,661	2.2	H-58	6" Lines	Harrison.
						Lewis.
96	10	15,768	3.0	Davis Sta.	H-62	Harrison.
						Harrison.
97	10	16,327	3.1	Marts Sta.	Cold Water Sta.	Doddridge.
98	10	25,593	4.8	Davis Sta.	Lewis Frm.	Harrison.
99	10	31,456	5.8	Fink Sta.	Churchville	Lewis.
100	14	44,693	....	.....	.....	Gilmer.
..	16	37,680	15.6	Cedarville	Cove Lick Sta.	Lewis.
[fol. 247]						
101	10	25,528	4.8	Fink Sta.	H-121	Lewis.
102	8	13,748	2.6	H-57	H-121	Gilmer.
104	8	171	....	.....	.....	Gilmer.
..	10	350	.09	H-15	Smithburg Sta.	.....
105	8	171	....	.....	.....	Doddridge.
..	10	350	.09	Smithburg Sta.	H-15	Doddridge.
						Wetzel.

106	20	104,365	20.2	Hastings Sta.	Clarington	Marshall. Gilmer.
107	10	16,424	3.1	H-100	Hoover Sta.	Braxton.
108	10	14,826	2.8	Goff Sta.	6" Lines	Harrison.
109	10	8,379	1.6	Goff Sta.	6" Lines	Harrison.
110	8	8,024	....	.....	.....	.....
..	10	15,631	4.5	Goff Sta.	H-141	Harrison.
111	8	10,807	2.0	Wallace Sta.	H-7	Harrison.
112	8	13,025	....	.....	.....	.....
[fol. 248]						
..	10	354	2.5	Weston Sta.	H-59	Lewis.
113	10	1,462	.3	Weston Sta.	H-32	Lewis.
114	8	2,346	.44	H-10	6" Lines	Wetzel.
116	10	11,079	2.1	Hawkins Sta.	6" Lines	Marion. Wetzel.
117	12	108,422	20.6	Hastings Sta.	H-57	Tyler.
119	8	9,189	....	.....	.....	.....
..	10	4,466	2.6	H-12	6" Lines	Marshall.
120	8	6,686	1.3	H-125	H-127	Doddridge.
121	8	10,700	....	.....	.....	.....
..	10	19,689	5.7	H-102	H-101	Gilmer.
123	10	66	....	.....	.....	Calhoun.
..	12	60,910	11.5	Cabot Sta.	Burnt House Jct.	Ritchie.
124	10	35,790	6.8	Cabot Sta.	H-137	Calhoun.
125	8	23,588	4.3	H-121	H-120	Gilmer.
126	10	63,080	....	.....	.....	Calhoun.
..	12	23,727	16.5	Cabot Sta.	Evans Sta.	Roane.

Trunk Lines December 31st, 1925—Continued

No.	Size, inches	Length, feet	Approx. total miles	From	To	County
[fol. 249]						
127	8	8,162	1.5	H-120	H-149	Doddridge.
128	10	51,737	9.8	Wright Sta.	Gallagher Sta.	Marion.
129	20	4,422	.8	Gallagher Sta.	Domestic Coke Plt.	Marion.
130	5 3/16	6,981	....	.....	.....	.....
..	6	11,379	3.5	Kinsey Sta.	H-27	Marion.
132	6	53,490	10.1	Parkersburg	Williamstown	Wood.
133	3	10,862	....	.....	.....	.....
..	4	29,494	8.0	Schultz Sta.	St. Marys	Pleasants.
134	6	25,891	4.6	H-9	Sistersville	Tyler.
135	4	4,968	....	.....	.....	.....
..	..	11,477	3.1	H-9	Paden City	Tyler.
136	6	15,041	2.8	H-9	Paden City	Tyler.
						Calhoun.
137	10	22,683	4.3	Jones Sta.	H-55	Gilmer.
						Gilmer.
138	16	126,844	....	Jones Sta.	Stuttler Jct.	Lewis.
..	20	62,789	35.9	.....	.....	Harrison.
139	10	6,091	1.1	Payne Sta.	H-138	Gilmer.
[fol. 250]						
141	16	23,667	4.5	H-150	Morrison	Harrison.
142	8	5,589	1.1	H-18	6" Lines	Lewis.
143	10	24,840	4.7	Payne Sta.	H-102	Gilmer.

144	10	45,080	8.5	Jones Sta.	6″ Lines	Gilmer.
145	10	10,500	2.0	Jones Sta.	6″ Lines	Gilmer.
146	8	13,695	2.6	Newberne Jct.	6″ Lines	Ritchie.
147	10	15,949	3.0	Glover Jct.	6″ Lines	Wetzel.
148	10	1,043	....	.....	.....	.....
..	12	48,535	9.4	Wright Sta.	H-25	Marion.
150	16	30,422	5.8	Springer Jct.	Stuttler Jct.	Harrison. Gilmer.
151	12	59,753	11.3	Payne Sta.	Burnt Hse. Jct.	Ritchie.
152	10	22,465	4.3	Smithburg Sta.	H-45	Doddridge.
153	6	3,602	....	.....	.....	.....
..	6⅝	3,340	1.3	H-52	Red Valve Marietta	Wood.
154	12	30,708	5.8	Burnt Hse. Jct.	Newberne Jct.	Ritchie. Ritchie.
155	20	80,663	13.4	Newberne Jct.	H-45	Doddridge.
[fol. 251]						Calhoun.
156	12	63,395	12.0	Cabot Sta.	Burnt Hse. Jct.	Ritchie.
157	12	26,953	5.1	H-57	6″ Lines	Ritchie.
158	10	507	.1	Smithburg Sta.	H-15	Doddridge.
161	8	26,820	5.0	Cabot Sta.	6″ Lines	Calhoun.
162	20	427,591	81.0	Newberne Jct.	Jackson Sta.	Ritchie. Gilmer. Calhoun. Roane. Clay. Kanawha.
163	16	126,148	23.9	Jackson Sta.	Near Madison	Kanawha. Boone.

Trunk Lines December 31st, 1925—Continued

No.	Size, inches	Length, feet	Approx. total miles	From	To	County
164	16	35,604	6.74	Jackson Sta.	Near Glascow	Kanawha.
165	10	10,981	2.1	Jackson Sta.	Cabot Cont. Pure Oil Co. Cont. #656	Kanawha.
[fol. 252]						
..	(10	32,128	6	.....	.....	.....
..	(12	22,157	4.2	.....	.....	.....
166	(18	1,258	2	Cornwell Sta.	Columbian Carbon	Kanawha.
..	(20	12,339	2.3	.....	Co. 8" Near Hunt	.....
167	10	1,683	.3	Cornwell Sta.	Shelton 6" Line	Kanawha.
168	10	2,260	.4	H-166	H-13380 Columbian Carbon	Kanawha.
169	10	23,368	4.4	H-166	Cont. Near Turner. Cosmos Carbon Co.	Kanawha.
170	(10	29,118	5.5	H-163	Cabot Cont. on	Boone.
..	(12	5,418	1.02	.....	Hopkins Fk. near Seth	.....
171	(10	2,142	....	Jackson Sta.	S. P. O. Co. Cont.	Kanawha.
..	(12	227	.5	.....	.....	.....
173	10	822	.15	H-166	Eastern Carbon Co. Cont.	Kanawha.
176	8	22,000	4.16	H-117	Centerville Sta.	Tyler.

(Here follows maps showing pipe lines and gasoline plants and stations, marked side folio pages 253, 254, 255, and 256)

MAPS

TOO

LARGE

FOR

FILMING

[fol. 257] EXHIBIT "FORM OF GAS PURCHASE CONTRACT"

This Agreement made and entered into this — day of ——, A. D. 192-, by and between —— ——, of ——, part- of the first part, hereinafter called the Vendor, and —— —— Gas Company, a Corporation, party of the second part, hereinafter called the Vendee;

Witnesseth, that the Vendor, for and in consideration of the covenants on the part of the Vendee to be paid, kept and performed, as hereinafter set forth, has sold and does hereby sell unto the Vendee, and agrees that the Vendee may take, all of the natural gas that may be produced by the Vendor from — certain tract of land now held and operated or about to be operated by the Vendor, under and by virtue of — lease- for oil and gas purposes described as follows, to-wit:

[fol. 258] The Vendor covenants and agrees to include under this agreement the gas produced from lands now held or hereafter acquired by Vendor, any part of which is within a distance of one-half mile from the above described lands or any of them, which said gas is hereby sold unto the Vendee upon the terms and conditions herein set out.

Such rights of entry, use and occupation of the surface of said land—as are vested in the Vendor are permitted to the Vendee if necessary under this contract.

In consideration of which and other covenants made, to be faithfully kept and performed by each party to the other as herein set forth, said parties mutually covenant and agree as follows:

I. This contract shall go into effect upon the day of its execution and delivery and the marketing of gas shall commence on the — day of ——, 192-, or as soon thereafter as the necessary rights of way can be purchased on reasonable terms, and the lines, meters and appliances secured and put into operation, allowance being made for unavoidable delays and accidents and for interference by legal proceedings, subject, however, to the provisions of Item V (a) hereof.

This contract and all rights thereunder shall continue for a term of — year- from the date first gas is delivered,

and thereafter until this contract is terminated, as provided in Item XI hereof.

II. The Vendee agrees to furnish the pipe, construct and put into operation a pipe line not to exceed a diameter of six inches, to lead from the Vendee's pipe line in the vicinity of said land-, and to extend thence to ——. The pipe line so agreed to be constructed by the Vendee shall be designated for the purposes of this contract as the Vendee's "Extended Line:" and the receiving end of said "Extended Line" shall be designated as the "Junction Station." It is provided, however, that the Vendee shall not be required to construct any pipe line until the Vendor shall have drilled on said land a well which is capable of producing at natural pressure into the said line of the Vendee against the varying pressures from time to time maintained therein — cubic feet of natural gas per day, and that said "Extended Line" may be reduced in size from time to time when justified by a decrease in the production of gas from said lands.

III. All necessary gathering lines and fittings to connect each producing gas well now drilled and that may hereafter be drilled upon the said land- to and into said "Extended Line" at said "Junction Station," shall be furnished, constructed and put into operation promptly by the Vendor; all drips or devices that may be found necessary to separate any fluids from the gas in said gathering lines shall be installed by the Vendor and operated by the Vendor so that the gas entering said "Extended Line" shall be dry; and the Vendee shall also have access to said drips or devices with the right to operate the same if necessary, but without assuming the duty so to do; the fittings necessary for the connection of said gathering lines to said "Extended Line" at said "Junction Station" shall be furnished and installed by the Vendee promptly when and as soon as the gathering lines are ready to be connected.

The Vendor agrees to equip the casing head or gates on all wells on said lands with a tap and valve suitable for the gauging of the minute pressures of the gas in said wells and the Vendee shall have the privilege of making

such gauges at all reasonable times during the term of this contract.

[fol. 259] IV. All gas producing wells on said land- shall be and remain continuously connected to the said gathering lines so that the wells may at all times during the term of this contract be in position to produce into the said system of lines; except that during such time as any wells require repairs, they may be temporarily disconnected during such repairs; the Vendor agrees to keep said wells in good condition for the production of gas, and to make the required repairs to wells only in the eight months of any calendar year from April 1st to December 1st, and not in the other four winter months excepting with the written consent of the Vendee; as soon as the repairs to any well have been completed, the well shall be immediately reconnected by the Vendor to the gathering lines established under this contract.

V. The Vendee has bought and does hereby agree to take and pay for all the natural gas that is produced from said wells and marketed under the provisions of this agreement. Said gas is sold and to be taken in its natural state at the natural pressure of the gas flowing from said wells, and discharging into the Vendee's lines, against the varying pressure from time to time maintained therein and where, after its measurement, it may be commingled with whatever gas the Vendee may be from time to time marketing and transporting through said lines; and that the Vendee is not required to take gas from the Vendor's wells to the exclusion of gas transported from other sources. It is provided, however, that the Vendee may at its option compress and pump the gas purchased under this contract. It is further agreed, that while the Vendee shall take the gas from said wells in the six winter months from November 1st to May 1st of each year during the term of this contract, at the full flow of said gas from the wells into the said gathering lines and against the varying pressures in said — limited only by the right of the Vendee to choke back said gas to the point of safety in the event the pressure of gas becomes too high for the safety of its lines, yet in the six summer months from May 1st to November 1st of each year, the Vendee shall be required to

take only one-half the volume that was taken in the six preceding winter months; such volume to be taken in said six summer months may be taken throughout each and every day by partially closing gates and other similar means to reduce the flow to the required quantity, or it may be taken by using the well or wells one-half of the time during such summer months, or by taking the gas from one or more wells at the full flow of the same into the aforesaid lines and at the same time shutting in all other wells, or in any other manner deemed by Vendee most beneficial to the parties hereto so that the required quantity of gas be taken; and Vendor agrees to co-operate with Vendee in making the necessary arrangements for the aforesaid purposes.

V (a). It is understood between the parties hereto that if no gas be delivered hereunder in the six winter months from November 1st, ——, to May 1st, ——, then the Vendee shall not be required to take any gas in the following six summer months except at its election, and if any gas be taken by the Vendee in said six summer mounts, the volume so taken shall be such only as Vendee may desire to take.

[fol. 260] VI. The unit of measurement in determining the quantity of gas to be paid for at the price specified herein, shall be 1,000 cubic feet at a temperature of 50° F. and at a pressure of 10 ounces above an atmospheric pressure of 14.7 pounds, according to Boyle's Law for measuring gas at varying pressures; and for measurement by orifice meter or pitot tube, the following shall be used, a barometer of 14.4 pounds (being the assumed average) per square inch, a flowing temperature of 40° F. (disregarding variations of temperature and barometer).

The Vendor agrees to furnish free of cost to the Vendee a site satisfactory to the Vendee upon which said meter or meters may be located and maintained during the term of this contract; also a right of way free from all costs and claims for damages to lands, crops and fences by reason of the construction, repairs, maintenance and removal of any pipe line of the Vendee required hereunder.

The Vendee shall read the meters daily, or as often as the meter or meters require, but each party shall have constant access to the meters. The cost of the meter house, installing

and maintaining the meter house and meters, and of reading the meters shall be borne by the Vendee. At the end of each month a statement, together with the meter charts, if requested by the Vendor, shall be rendered to the Vendor; said statement shall show the amount of gas taken in that month, measured as aforesaid, together with a computation of the amount due and payable to the Vendor at the rate or price of —, which is hereby fixed as the price to be paid for gas under this contract. Bills also shall be rendered by the Vendee to the Vendor from time to time, for reimbursement of payments made for damages to lands, crops and fences caused by the construction, repair, maintenance and removal of any pipe line of the Vendee required hereunder, and the Vendor shall promptly pay the same; the Vendee shall be entitled to deduct the amount of such bills from the monthly settlements hereunder; all payments for gas taken shall be made monthly on or before the 30th day of the month following that in which the gas is taken. The meter charts shall be returned to the Vendee and all complaints, settlements and adjustments shall be made in the office of the Vendee, in Pittsburgh, Pennsylvania.

VII. If either party challenges the accuracy of any meter in use under this contract and desires to have the meter tested or repaired, the Vendee shall test and repair the same in the presence and to the satisfaction of the Vendor or a representative, if the Vendor wishes to exercise the right to be present or to be represented at such test; the cost of testing and repairing the meter shall be borne by the party challenging the accuracy of the same, if the meter on test proves to be correct, or within three percent correct; but if the meter on test proves more than three percent fast or slow, then the cost of testing and repairing the meter shall be borne by the Vendee; for repair work the meter will be shipped to Pittsburgh, Pennsylvania, or to any properly equipped shop of the Vendee and there tested, adjusted or repaired, unless it can be tested, adjusted and repaired on the ground. During such time as the meter or meters are out of repair or while being tested, the gas taken shall be estimated until the repaired meter is installed, and adjustment and settlement shall be made at the regular monthly periods on the basis of the amount of gas registered at like pressures for like periods of time when the

meter was registering accurately. The statements of meter measurements and estimated adjustments, which under this contract are to be rendered by the Vendee to the Vendor at the end of each month, shall be conclusive on the parties hereto, excepting as to corrections or adjustments then pending, unless exceptions thereto in writing shall be made by the Vendor and mailed to the Vendee within four days after the Vendor shall receive the statements.

VIII. The Vendor hereby appoints —— ——, as — agent, to whom reports may be mailed addressed to —— and to whom payments may be made; and said agent is authorized to give the necessary receipts and acquittances to the Vendee and to make adjustments and settlements under this contract.

IX. The Vendor agrees in — operations upon said land- not to waste the gas that may be produced from any sands in any well drilled thereon, so that gas not actually taken by the Vendee shall be reserved and saved for it, and the Vendor agrees and binds — not to dispose of any of the gas produced from said land- to any other company or person; but this covenant shall not interfere in any way with the Vendor's production of or drilling for oil in any wells on said land- and the Vendor reserves the right to use the gas in — own operations upon said land-.

[fol. 261] X. All lines and fittings furnished under this contract shall remain the property of the party furnishing the same and may be removed by such party at the termination of this contract.

XI. When the production of gas from the said land- so decreases in volume that the Vendee is unable to market therefrom under this agreement twenty (20,000) thousand cubic feet of gas per day on an average during the said six winter months of any year, then either party hereto may terminate this contract, after which no further liability shall accrue and each party may reclaim its property used for the purpose of this contract.

XII. The Vendor warrants generally the gas hereby sold and covenants and agrees to indemnify and save harmless the Vendee of and from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of

the adverse claims of any and all other persons to the gas hereby sold, or to rentals or royalties thereon or therefrom.

XIII. In case any tax or assessment is now or hereafter imposed on natural gas, or its production, transportation, sale, delivery or use, or the business of producing, transporting, selling, delivering or using natural gas or in any other manner so as to constitute directly or indirectly a charge upon the gas marketed by the Vendee hereunder, the amount of such tax or assessment shall be borne by the Vendor so far as it affects or relates to or is apportionable to the natural gas delivered hereunder; and in the event the Vendee is required to pay the same, the amount thereof may be deducted from the payments accruing to the Vendor under this agreement.

XIV. All the covenants, conditions and obligations of this agreement shall extend to and be binding upon the heirs, personal representatives, successors and assigns, respectively, of the parties to it, and shall be in the nature of covenants running with the said lease-, ells and pipe lines for the full term hereinbefore set forth.

Witness the — seal of the Vendor and the common and corporate seal of the Vendee duly affixed and attested by — proper officers the day and year first above written.

—— ——. [SEAL.]
—— ——. [SEAL.]
—— ——. [SEAL.]
—— ——. [SEAL.]
—— ——. [SEAL.]
—— ——. [SEAL.]
—— ——. [SEAL.]
—— ——. [SEAL.]
—— ——,
By —— ——,
Vice President.

Attest: —— ——, Secretary.

[fol. 262] (W. Va. Acknowledgment)

STATE OF ——,
County of ——, ss:

I, —— ——, a — of said County of ——, do certify that —— ——, whose name — signed to the within writing, bearing date the — day of ——, A. D. 19—, ha- this day acknowledged the same before me in my said County.

Given under my hand and official seal this — day ——, A. D. 192–.

—— ——,
—— ——.

My commission expires — —, ——.

(W. Va Corp. Acknowledgment)

STATE OF ——,
County of ——, ss:

I, —— ——, a Notary Public of said County of ——, do certify that —— —— personally appered before me in my said County, and being by me duly sworn, did depose and say that he is the — President of ——, one of the corporations described in the writing above, bearing date the — day of ——, 192–, authorized by said corporation to execute and acknowledge deeds and other writings of said corporation, and that the seal affixed to the said writing is the corporate seal of said corporation, and that the said writing was signed and sealed by him on behalf of said corporation by its authority duly given. And the said —— —— acknowledged the said writing to be the act and deed of said corporation.

Given under my hand and official seal this — day of ——, A. D. 192–.

—— ——,
Notary Public.

My commission expires —— —, ——.

(W. Va. Corp. Acknowledgment)

STATE OF ——,
County of ——, ss:

I, —— ——, a Notary Public of said County of ——, do certify that —— —— personally appeared before me in my said County, and being by me duly sworn, did depose and say that he is the — President of ——, one of the corporations described in the writing above, bearing date the — day of ——, 192–, authorized by said corporation to execute and acknowledge deeds and other writings of said corporation, and that the seal affixed to the said writing is the corporate seal of said corporation, and that the said writing was signed and sealed by him on behalf of said corporation by its authority duly given. And the said —— —— acknowledged the said writing to be the act and deed of said corporation.

Given under my hand and official seal this — day of ——, A. D. 192–.

—— ——,
Notary Public.

My commission expires —— —, ——.

[fol. 263] EXHIBIT "SCHEDULE OF GAS PURCHASE CONTRACTS, FIRST CLASS AND SECOND CLASS"

Hope Natural Gas Company

Statement of Gas Purchased from Producers in West Virginia Where Purchase is made at Mouth of Well or in Vicinity of the Wells

First Class

County	Number of agreements	Amount of gas purchased nine months ending September 30, 1925	Maximum price	Minimum price
Braxton	3	6,419M	.1400	.1200
Calhoun	16	755,272	.1500	.1050
Doddridge	10	48,859	.1400	.1050
Gilmer	31	1,137,552	.1500	.0950
Harrison	21	268,241	.1500	.1050
Lewis	19	303,181	.1500	.1050
Marion	4	19,033	.1500	.1200
Marshall	2	4,261	.1500	.1200
Monongalia	8	166,658	.1500	.1200
[fol. 264] Pleasants	17	265,078	.1400	.1050
Ritchie	88	1,347,102	.1500	.0850
Taylor	1	4,509	.1050	.1050
Tyler	6	69,120	.1500	.1200

Upshur	1	18,205	.1400	.1400
Wetzel	7	54,745	.1500	.1050
Wirt	1	4,476	.1050	.1050
Various	2	41,687	.1500	.1200

[fol. 265]

Hope Natural Gas Company

Statement of Gas Purchased from Producers in West Virginia where Gas is Produced from Scattered Wells, Collected by the Producer, and Transported to One or More Delivery Points

Second Class

County	Date of agreement	Name	Amount of gas purchased nine months ending September 30, 1925	Average price
Calhoun	12-21-18	Godfrey L. Cabot, Inc	2,660,439M	.1400
Gilmer	8-25-16	United Fuel Gas Company	3,522,130	.2238
Harrison	10-20-24	Clarksburg Light & Heat Co.	47,129	.2500
Harrison	10-28-09	Eagle District Gas Co.	69,237	.1500
Wood	11-29-24	Park Bowser	28,422	.1500
Marion, Wetzel & Calhoun	1-1-23	The Carter Oil Company	1,774,844	.1701
[fol. 266] Doddridge, Ritchie & Tyler	12-24-23	Columbian Carbon Company	1,223,907	.2100
Gilmer, Ritchie, Pleasants, Calhoun, Wetzel, Harrison, Lewis, Monongalia, Tyler, Marshall and Doddridge	10-1-22	South Penn Oil Company	4,193,204	.1712
Jackson and Roane	12-13-23	Godfrey L. Cabot, Inc	673,146	.1800

[fol. 267] EXHIBIT "SCHEDULE PITTSBURGH & WEST VIRGINIA GAS COMPANY CONTRACTS"

Pittsburgh & West Virginia Gas Company

Statement of Gas Purchased from Producers in West Virginia Where Purchase is Made at Mouth of Well or in Vicinity of the Wells

County	Number of agreements	Amount of gas purchased nine months ending September 30, 1925	Average price
Braxton	24	465,671 M	.1189
Doddridge	11	144,004	.1181
Gilmer	13	326,611	.1370
Harrison	29	147,734	.1121
Lewis	25	1,342,034	.1371
Marion	1	3,278	.15
Monongalia	3	27,664	.1492
Ritchie	28	727,694	.1266
Tyler	4	31,852	.1120
Wetzel	3	16,621	.1462

Controller's Office, January 5th, 1926.

[fol. 268] EXHIBIT "SCHEDULE UNITED FUEL GAS COMPANY CONTRACTS"

United Fuel Gas Company

Statement of Gas Purchased from Producers in West Virginia Where Purchase is Made at the Mouth of Well or in the Vicinity of the Wells

County	Number of agreements	9 Months ending Sept. 30, 1825, M cu. ft.	Average price
Clay	7	654,742	.0676
Jackson	6	132,621	.0700
Kanawha	30	4,323,794	.0729
Logan	5	355,780	.0902
Mingo	5	927,304	.0641
Putnam	1	81,963	.0927
Roane	8	1,797,141	.0891
Wayne	6	414,058	.0557

[fol. 269] EXHIBIT "SCHEDULE MANUFACTURERS LIGHT & HEAT COMPANY CONTRACTS"

Manufacturers Light & Heat Company

Statement of Gas Purchased from Producers in West Virginia Where Purchase is Made at Mouth of Well or in Vicinity of the Wells

County	Number of agreements	Amount of gas purchased 9 months ending Sept. 30, 1925	Average price
Ritchie	1	10,333,000	$ .1400
Tyler	7	18,936,000	.1359
Marshall	12	321,744,000	.1778
Brooke	2	20,413,000	.1827
Monongalia	3	29,008,000	.1574
Doddridge	15	269,645,000	.1457
Wetzel	8	198,633,000	.1597
Marion	2	77,579,000	.2000
Hancock	2	2,944,000	.2000

[fol. 270] EXHIBIT "DISTRIBUTION OF PLAINTIFF'S GAS SALES"

Hope Natural Gas Company

Statement Showing Total Sales of Gas for Consumption in West Virginia and Amount Transported for Consumption Outside of West Virginia

	Year ending December 31st				9 months ending September 30, 1925	Avg. % 4 yrs. 9 mos.
	1921	1922	1923	1924		
Consumed in West Virginia:						
City Plant Sales	4,642,857	5,831,164	5,939,093	5,653,438	4,215,491	.....
Drillers & Pumpers	488,615	511,561	442,992	369,601	294,967	.....
Free Gas—Limited Consumers	9,988	6,450	6,568	7,263	4,608	.....
Utilities in W. Va.	464,132	573,262	926,391	1,324,971	555,905	.....
Miscellaneous Companies in W. Va.	619,408	406,724	587,565	326,842	7,621	.....
[fol. 271] Manufacturers Light & Heat Co.	2,790,819	2,675,085	2,904,514	3,130,825	1,986,566	.....
Total	9,015,819	10,004,246	10,807,123	10,812,940	7,065,158	.....
Percentage of Grand Total Sales	17.98%	18.88%	19.21%	20.06%	19.01%	19.05%

Transported for Consumption outside of West Virginia:						
The East Ohio Gas Co.	27,090,469	30,432,856	32,437,467	31,806,172	23,562,914	.....
[fol. 272] The Peoples Natural Gas Co.	3,769,608	3,036,168	4,073,037	2,295,279	572,080	.....
The River Gas Co.	930,071	689,889	474,805	421,244	220,095	.....
Fayette County Gas Co.	1,055,116	1,128,748	968,941	1,003,602	651,105	.....
Manufacturers Light & Heat Co.	8,283,858	7,685,430	7,483,590	7,558,233	5,103,245	.....
Total	41,129,122	42,973,091	45,437,840	43,084,530	30,109,439	.....
Percentage of Grand Total Sales	82.02%	81.12%	80.79%	79.94%	80.99%	80.95%

[fol. 273] EXHIBIT "STEPTOE LAW"

Chapter 71

(House Bill No. 59—Mr. John)

An Act in relation to persons, firms and corporations engaged in furnishing, or required by law to furnish, natural gas for public use within this state, to provide remedies for the enforcement of this act and penalties and punishment for violations thereof, and to extend the jurisdiction of the public service commission and of the courts of this state with respect thereto.

[Passed February 10, 1919. In effect ninety days from passage. Approved by the Governor February 17, 1919]

SEC.
1. Persons engaged in furnishing natural gas for public use in West Virginia; requirements to extent of supply.
2. Powers of public service commission to aid persons having inadequate supply for public use; application and hearing; connection of pipes and lines; determining terms and condition of connections; costs and expenses in making same.
3. Duties and powers of public service commission conferred under previous acts, when not in conflict with this act, reconferred in respect to subject matter of this act.
4. Violations of this act; right of aggrieved persons to complain to public service commission; right of appeal to courts of competent jurisdiction.
5. Penalties for violations of requirements of commission.
6. Suit may be brought for damages through violations; court may compel attendance of persons against whom suit is brought.
7. Defining the word "persons."
8. Sections, provisions and clauses of this act held separable.
9. Repealing acts and parts of acts inconsistent.

Be it enacted by the Legislature of West Virginia:

Section 1. That every person engaged in furnishing, or required by law (whether statutory or common law) to furnish, natural gas for public use, or for the use of the public, or any part of the public, whether for domestic, industrial or other consumption, within this state, shall to the extent of his supply of said gas produced in this state, (whether produced by such person or by any other person), furnished for public use within the territory of this state, and for the use of the public and every part of the

public within the territory of this state, in or from which such gas is produced, or through which said gas is transported, or which is served by such person, a supply of natural gas reasonably adequate for the purposes, whether [fol. 274] domestic, industrial or otherwise, for which natural gas is consumed or desired to be consumed by the public, or any part of the public, within said territory in this state, and for which said consumer or consumers therein shall apply and be ready and willing to make payment at lawful rates.

Sec. 2. That in case any person engaged in furnishing, or required by law (whether statutory or common law) to furnish natural gas for public use within this state, or for the use of the public or any part of the public within this state, shall have a production or supply of natural gas which is, or probably will be, insufficient to furnish for such use, (for the purposes, whether domestic, industrial or otherwise, for which natural gas is consumed by the public or any part of the public), within the territory in this state served by such person, then and in that event the public service commission shall have authority, and the same is hereby conferred on it, upon the application of any such person or any of his consumers within this state and after due hearing upon notice and proof to the satisfaction of the commission that public convenience and necessity so require, to order any other person engaged in furnishing, or required by law (whether statutory or common law) to furnish, natural gas for public use within this state, and producing or furnishing natural gas for public use in said territory or transporting the same through said territory, to furnish to such person having such insufficient production or supply, natural gas for the purpose of supplying such deficiency, at and during such times, upon and at such just and reasonable terms, conditions and rates, and in such amounts, as the commission shall prescribe. And whenever, after such hearing upon notice and proof, the commission shall determine that public convenience and necessity so require, the commission shall have authority to provide for and compel the establishment of a reasonable physical connection or connections between the lines, pipes or conduits of such person having such excess supply of

gas and the lines, pipes or conduits of the person having such deficiency of supply, and to require the laying and construction of such reasonable extensions of lines, pipes or conduits as may be necessary for the establishment of such physical connection or connections, and to ascertain, determine and fix the just and reasonable terms and conditions of such connection or connections, including just and reasonable rules and regulations and provisions for the payment of the costs and expense of making the same or for the apportionment of such cost and expense as may appear just and reasonable. Provided, however, that no person shall, by virtue of this section, be ordered to furnish natural gas to any other person so engaged in furnishing, or required by law to furnish, natural gas for public use, except to the extent that the person so ordered to furnish natural [fol. 275] gas shall, at the time, have a production or supply of natural gas in excess of the quantity sufficient to furnish a reasonably adequate supply to his consumers within this state; nor shall any person, by virtue of this section, be ordered to furnish natural gas to any other person so engaged in furnishing or required by law to furnish, natural gas for public use in a territory within this state, if and when the said person having said excess shall, to the extent of such excess, be ready and willing to furnish, and within such time as the commission shall prescribe shall actually furnish, to the consumers within said territory a reasonably adequate supply of natural gas.

Sec. 3. That insofar as the same shall not be in conflict with this act, all of the authority, powers, jurisdiction and duties conferred and imposed on the public service commission by the act entitled, "An act to create a public service commission and to prescribe its powers and duties, and to prescribe penalties for the violations of the provisions of this act," passed February twenty-first, one thousand nine hundred and thirteen, as amended by the act entitled, "An act to amend and re-enact sections one, two, three, four, five, nine, ten, fourteen, fifteen and twenty-two, of chapter nine of the acts of one thousand nine hundred and thirteen, creating a public service commission, prescribing its powers and duties, and penalties for violation of the provisions of said chapter, and to add thereto six sections

to be known as sections twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, enlarging the powers and duties of said public service commission, prescribing additional penalties and giving to the commission power to punish for contempt," passed February tenth, one thousand nine hundred and fifteen, are hereby conferred and imposed on the public service commission in respect to the subject matter of this act, or any part thereof.

Sec. 4. That in case of violation of any provision of this act any person aggrieved or affected thereby may complain thereof to the public service commission in like manner, and thereupon such procedure shall be had, as is provided in respect to other complaints to or before said commission, and all such proceedings and remedies may be taken or had for the enforcement or review of the order or orders of said commission, and for the punishment of the violation of such order or orders, as are provided by law in respect to other orders of said commission. In case of the violation of any provision of this act, the public service commission, or any person aggrieved or affected by such violation, in his own name may apply to any court of competent jurisdiction by a bill for injunction, petition for writ of mandamus or other appropriate action, suit or proceeding, to compel obedience to and compliance with this act, or to [fol. 276] prevent the violation of this act, or any provision thereof, pending the proceedings before said commission, and thereafter until final determination of any action, suit or proceeding for the enforcement or review of the final order of said commission; and such court shall have jurisdiction to grant the appropriate order, judgment or decree in the premises.

Sec. 5. That if any person subject to the provisions of this act shall fail or refuse to comply with any requirement of the commission hereunder, such person shall be subject to a fine of not less than one hundred dollars nor more than five hundred dollars for each offense; and such person, or the officers of the corporation, where such person is a corporation, may be indicted for their failure to comply with any requirement of the commission under the provisions of this act, and upon conviction thereof, may be fined not to exceed five hundred dollars, and in the discretion of

dollars in full compensation for the services rendered and the expenses incurred by him in that connection, and that this sum be taxed as part of the aggregate costs in the two suits and be paid by the parties in the proportions just named;

5. That the Clerk of this Court transmit to the Chief Magistrates of the Commonwealth of Pennsylvania and the States of Ohio and West Virginia copies of this decree only, authenticated under the seal of this Court.

June 11, 1923.

Dissenting: Mr. Justice Holmes. Mr. Justice McReynolds, Mr. Justice Brandeis.

A true copy. Test:

Wm. R. Stansbury, Clerk of the Supreme Court of the United States. (Seal of the Supreme Court of the United States.)

[fols. 279 & 280] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1922

Nos. 15 & 16, Orig.

THE COMMONWEALTH OF PENNSYLVANIA, Complainant,

vs.

THE STATE OF WEST VIRGINIA

and

THE STATE OF OHIO, Complainant,

vs.

THE STATE OF WEST VIRGINIA

On Rehearing

It is ordered by this Court that the opinion delivered and decree entered herein on June 11th, 1923, be, and the same are hereby reaffirmed.

December 3, 1923.

Exhibit: "Pipe Line Privilege Tax Return, Rules and Regulations and Law."

This Return is to be Forwarded to the State Tax Commissioner, Charleston, West Virginia.

FOR USE OF BUREAU ONLY
Return received.....
Number .....
Verified by.....
Assessed by .....

Form 200—Tax Com.
(July, 1919.)

STATE OF WEST VIRGINIA

Pipe Line Privilege Tax Return

(Required by Chapter 5, Acts of the Legislature of 1919, Extra Session)

THIS RETURN MUST BE IN THE HANDS OF THE STATE TAX COMMISSIONER, CHARLESTON, WEST VIRGINIA, ON OR BEFORE AUGUST 30, 1919.

FOR USE OF BUREAU ONLY
Amount of tax assessed $.....
For year ended.....
Journal page.....
Company notified.....

RETURN FOR FISCAL YEAR JULY 1, 1918—JULY 1, 1919.

By ....., whose principal office or place of
(Name of person, firm or corporation)
business is at .....
(Street and Number) (City or town) (State)
and the place at which are kept the books of account, papers and other data from which this return is prepared is .....
(City or Town)
.....
(State)

Section 4 of the law provides that "the state tax commissioner shall ascertain and assess the tax upon the company making a return, and shall notify it of the amount of such tax by notice deposited in the postoffice addressed to such company at its principal office or place of business."

Give below the exact address to which official notices of assessment, if any, should be forwarded: (Give city, etc. but not company's name)

.....

There should appear in each blank space provided for information SOME NOTATION to indicate that the information desired has not been overlooked. The word "NONE" may be used where that word expresses the FACTS. Where sufficient space is not provided for the entry of the information required, lists containing full information in the form indicated should be marked in accordance with the particular item and attached hereto; when so attached they become parts of this return.

IMPORTANT—Read this form and all instructions carefully and fill in supplementary statement before making entries in return proper. Totals in supplementary statement should agree with totals in return.

1. The word "company", as used in this blank, is understood to include any person, firm, partnership, corporation, joint-stock company or association liable for the privilege tax in connection with which the information requested below is required.
2. The word "transported" and the words "transported or conveyed" are understood as having reference to oil, gas, etc., transported within the State of West Virginia, by means of pipe lines, for sale to consumers within or without the state, or use by the reporting company or others within or without the state in the making of any products derived therefrom.
3. Total mileage of all pipe lines owned, leased or operated by the reporting company, including trunk, gathering and distributing lines, IN ALL STATES .....Miles.

Total mileage of all pipe lines owned, leased or operated by the reporting company, including trunk, gathering and distributing lines, IN WEST VIRGINIA .....Miles, of which.....miles were used in the transportation of oil, gas, etc., during the year for which return is made.

QUANTITIES TRANSPORTED WITHIN WEST VIRGINIA BY MEANS OF PIPE LINES, AND AMOUNT OF TAX MEASURED THEREBY

	Quantity	Rate	Amount of Tax	
			Dollars	Cents
4. Total quantity of crude oil or petroleum transported or conveyed within West Virginia....	..... Bbls.	2 cts. per barrel	$.....	.....
5. Total quantity of the products and distillates of crude oil or petroleum transported or conveyed within West Virginia.....	..... Bbls.	2 cts. per barrel	$.....	.....
6. Total quantity of natural gas transported or conveyed within West Virginia.....	.....M. Cu. Ft.	⅓ of 1c. per M. cu. ft.	$.....	.....
7. Total amount of tax assessable.....			$.....	.....

SUPPLEMENTARY STATEMENT.

4. CRUDE OIL OR PETROLEUM TRANSPORTED WITHIN WEST VIRGINIA BY MEANS OF PIPE LINES.

(a) Quantity produced by the reporting company within West Virginia	.....Bbls.
(b) Quantity purchased by the reporting company from others within West Virginia	.....Bbls.
(c) Quantity transported or conveyed by the reporting company within West Virginia, for others, production inside West Virginia only	.....Bbls.
(d) Quantity produced or purchased by the reporting company in other states and transported or conveyed by it into or through West Virginia	.....Bbls.
(e) Quantity transported or conveyed by the reporting company into or through West Virginia for others, production outside West Virginia only	.....Bbls.
(f) Total quantity transported or conveyed by the reporting company within West Virginia	.....Bbls.
(g) Are the barrels above reported, barrels of 42 gallons each?.....; if not, give the number of gallons per barrel.....	

5. PRODUCTS AND DISTILLATES OF CRUDE OIL OR PETROLEUM TRANSPORTED WITHIN WEST VIRGINIA BY MEANS OF PIPE LINES.

(a) Quantity produced by the reporting company within West Virginia	.....Bbls.
(b) Quantity purchased by the reporting company from others within West Virginia	.....Bbls.
(c) Quantity transported or conveyed by the reporting company within West Virginia, for others, production inside West Virginia only	.....Bbls.
(d) Quantity produced or purchased by the reporting company in other states and transported or conveyed by it into or through West Virginia	.....Bbls.
(e) Quantity transported or conveyed by the reporting company into or through West Virginia, for others, production outside West Virginia only	.....Bbls.
(f) Total quantity transported or conveyed by the reporting company within West Virginia	.....Bbls.
(g) Are the barrels above reported, barrels of 42 gallons each?.....; if not, give the number of gallons per barrel.....	

6. NATURAL GAS TRANSPORTED WITHIN WEST VIRGINIA BY MEANS OF PIPE LINES.

(a) Quantity produced by the reporting company within West Virginia	.....M. Cu. Ft.
(b) Quantity purchased by the reporting company from others within West Virginia	.....M. Cu. Ft.
(c) Quantity transported or conveyed by the reporting company within West Virginia, for others, production inside West Virginia only	.....M. Cu. Ft.
(d) Quantity produced or purchased by the reporting company in other states and transported or conveyed by it into or through West Virginia	.....M. Cu. Ft.
(e) Quantity transported or conveyed by the reporting company into or through West Virginia, for others, production outside West Virginia only	.....M. Cu. Ft.
(f) Total quantity transported or conveyed by the reporting company within West Virginia	.....M. Cu. Ft.

I, (a)..... (b).....

of the company whose return showing the quantities of crude oil or petroleum, or the products and distillates thereof, and natural gas, transported by means of pipe lines within the State of West Virginia during the year ending July 1, 1919, is as above set forth, on my oath say that the above return was prepared from the original books, records and papers of the reporting company; that I am thoroughly familiar with the business of the reporting company; and that the items entered in the foregoing return and supplementary statement, and in any additional list or lists attached to and made a part of this return and numbered consecutively from.....to....., are to the best of my knowledge and belief, and from the best information I have been able to obtain, true and correct in each and every particular.

Sworn to and subscribed before me this.....day of....., 19..... (c).....

(d).....

Seal of Officer Taking Affidavit.

..... (Notary Public.)

My commission expires on the.....day of....., 19.....

(a) Maker of return. (b) Insert here "owner," "partner," "president," "vice-president" or "treasurer," as the case may be. (c) Maker of return will sign here. (d) Insert here "owner," "partner," "president," "vice-president," or "treasurer," as the case may be.

To Persons, Firms and Corporations Engaged in the Transportation of Oil and Gas Within the State of West Virginia, by means of Pipe Lines:

Section 3, Chapter 5, Acts Extra Session of the Legislature of 1919, invests full power and authority in the State Tax Commissioner, and makes it his duty, to prescribe forms for returns and assessments, and to make, issue and put in force all necessary and needful rules and regulations for the ascertainment and assessment of the privilege tax imposed upon persons, firms and corporations by said chapter. In pursuance of this provision, there is appended hereto, together with the law itself, such rulings, as, at this time, appear to be necessary and proper.

The form of return is also prescribed. As this is the first tax of the kind imposed by the Legislature of this State, the form of return may contemplate a more comprehensive showing than that which may be prescribed for subsequent years. However, the Tax Commissioner, at this time, believes the information asked for is essential to a just and uniform assessment against those persons, firms and corporations which are subject to the tax imposed, and respondents are expected to supply all information asked for, if available. Should it be impossible to furnish any particular information asked for, respondents must so state. There should appear in each blank space provided for information SOME NOTATION to indicate that the information desired has not been overlooked. The word "NONE" may be used where that word expresses the FACTS.

Respectfully,

Charleston, W. Va., June 30, 1919. W. S. HALLANAN, State Tax Commissioner.

THE LAW—Chapter 5, Acts Extraordinary Session of the Legislature of 1919, State of West Virginia.

(Passed March 31, 1919. In effect ninety days from passage. Approved by the Governor April 1, 1919.)

AN ACT to levy a privilege tax on any person, firm or corporation engaged in the transportation of crude oil or petroleum, or the distillates thereof, or of natural gas, by means of pipe lines, authorizing the State Tax Commissioner to provide rules and regulations for the collection of such tax, and defining the duties of the State Tax Commissioner hereunder.

Be it enacted by the Legislature of West Virginia:

Section 1. No person, firm or corporation, hereinafter called company, after the first day of July, one thousand nine hundred and nineteen, shall engage in or continue in the business of the transportation of crude oil or petroleum, or the distillates thereof, or of natural gas, by means of pipe lines, without the payment of an annual privilege tax hereby imposed for engaging in such business; **provided however,** that nothing contained in this act shall apply to any person, firm or corporation engaged in the business aforesaid where the crude oil, petroleum or distillates thereof, or natural gas, is by the entire system of such person, firm or corporation, transported a distance of less than ten miles.

Sec. 2. Every person, firm and corporation engaged in this state in the transportation of either crude oil or petroleum, or the products and distillates thereof, or of natural gas, or both, by means of pipe lines for sale to consumers within or without the state, or use within or without the state in the making of any products derived therefrom, shall pay to the state, as an annual privilege tax for engaging in such business in the state, two cents for each barrel of crude oil or petroleum, or the distillates thereof, and one-third of one cent for each thousand cubic feet of such natural gas as is so transported or conveyed within this state. **Provided** that only one such tax, annually, shall be required to be so paid.

Sec. 3. Every person, firm or corporation liable to tax imposed by this act, shall, within sixty days after the first day of July, one thousand nine hundred and nineteen, and within sixty days after the first day of July in each year thereafter, deliver to the State Tax Commissioner a return in writing showing the quantity of crude oil or petroleum, or the distillates thereof, or of natural gas transported or conveyed within this state during the fiscal year ending on the first day of July next preceding. Such return shall be signed and sworn to by the person making the same for himself or a partnership, and by the president, vice-president or other principal accounting officer making the same for a corporation, which return shall be in the form prescribed by the State Tax Commissioner. The State Tax Commissioner is hereby invested with full power and authority and it is hereby made his duty to prescribe forms for returns and assessments and to make, issue and put in force all necessary and needful rules and regulations for ascertaining and assessing the tax hereby imposed upon every company.

Sec. 4. The State Tax Commissioner shall ascertain and assess the tax upon the company making a return, and shall notify it of the amount of such tax by notice deposited in the post office addressed to such company at its principal office or place of business. Such ascertainment of the tax shall be final and conclusive, unless the same be appealed from in the manner following within thirty days after such notice is so deposited. If any company fail or refuse to make return, the State Tax Commissioner shall proceed, in such manner as may be proper, to obtain the facts and information required to be furnished by such return; and to this end, he may, by himself, or his duly appointed agent, make examination of the books, records and papers of any such company, and may take the evidence, on oath, of any person who he may believe shall be in possession of facts or information pertinent to the subject of inquiry, which oath he or the agent so appointed by him may administer. As soon as possible after procuring such information as he may be able to do with respect to any company failing or refusing to make a return, the State Tax Commissioner shall proceed to ascertain and assess the tax upon such company, and shall notify it of the amount thereof as hereinbefore provided. And his act shall be final as to any company which refused to make a return.

Sec. 5. If any such company, making a return as provided by this act, feels aggrieved by the assessment so made upon it for any year by the State Tax Commissioner, it may apply to the Board of Public Works by petition in writing, within thirty days after the notice is deposited as provided in the preceding section, for a hearing and a correction of the amount of the tax so assessed upon it by the State Tax Commissioner, in which petition shall be set forth the reasons why such hearing should be granted and the amount such tax should be reduced. The board shall promptly consider such petition, and may grant such hearing or deny the same. If denied, the petitioner shall be forthwith notified thereof; if granted, the board shall notify the petitioner of the time and place fixed for such hearing. After such hearing the board may make such order in the matter as may appear to them just and lawful, and shall furnish a copy of such order to the petitioner.

Sec. 6. No injunction shall be awarded by any court or judge to restrain the collection of all or any part of the taxes imposed and assessed under this act, except upon the ground that the assessment thereof was in violation of the constitution of the United States, or of this state; or, that the same were fraudulently assessed; or, that there was a mistake made in the amount of taxes assessed; and in case of a mistake no such injunction shall be awarded, unless application shall be first made to the Board of Public Works to correct the alleged mistake, and the board shall refuse to do so, which fact shall be stated in the bill, or unless the complainant pay into the treasury of the state all taxes appearing by the bill of complaint to be owing.

Sec. 7. Every company so assessed with taxes shall pay the same into the state treasury within sixty days after the date of the mailing of the notice of the amount thereof, or within thirty days after notification of the amount thereof, when ascertained and assessed by the Board of Public Works on appeal. All taxes assessed under provisions of this act against any such company shall constitute a debt to the state, and may be collected by action of assumpsit or appropriate judicial proceeding, which remedy shall be in addition to all other existing remedies for the collection of taxes. It shall be the duty of the State Tax Commissioner to proceed to collect such taxes with a penalty of ten per centum added thereto, if not paid when due. At the time of paying the taxes the State Tax Commissioner shall issue to the company paying the same a certificate of

payment for the proper fiscal year.

Sec. 8. Any person required or authorized by law to make, sign or verify any return by this act, who makes any false or fraudulent return or statement with intent to defraud the state or defeat or evade the payment of the tax, or any part thereof, imposed by this act, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars, nor more than five thousand dollars, to which fine shall be added the costs of prosecution.

Sec. 9. Any person engaging or continuing in the business aforesaid without having first secured a license, as hereinbefore provided, shall be liable to a fine of not less than one thousand dollars nor more than ten thousand dollars.

Sec. 10. All acts and parts of acts inconsistent herewith are hereby repealed.

RULES AND REGULATIONS CONCERNING THE PRIVILEGE TAX

—Required of Persons, Firms and Corporations—

For the Privilege of Transporting or Conveying Oil, Gas, Etc., By Means of Pipe Lines Owned, Leased or Operated.

STATE OF WEST VIRGINIA, OFFICE OF STATE TAX COMMISSIONER, Charleston, June 30, 1919.

1. DEFINITIONS

1-a. "Commissioner," as used in these rules shall mean the State Tax Commissioner of the State of West Virginia.

1-b. "Company," as used in these rules, shall include all persons, firms, partnerships, corporations, joint-stock companies and associations liable for the privilege tax.

1-c. "Oil or gas," as used in these rules, shall include crude oil or petroleum, or the products and distillates thereof, and natural gas.

1-d. The "entire system" of a company shall be understood to embrace all pipe lines used in the transportation of oil or gas whether owned, leased or operated and including trunk, gathering and distributing lines.

2 GENERAL PROVISIONS.

2-a. The adoption of these rules shall not preclude the Commissioner from revoking or amending same, in whole or in part, or from requiring additional information or supplemental or amended returns.

2-b. These rules shall not in any way relieve any company from any of its duties under the laws of the State of West Virginia.

2-c. Each rule issued by the Commissioner in connection with the privilege tax is to be considered and treated by the reporting company as a ruling of the Commissioner until revoked or superseded.

3. THE PRIVILEGE TAX

3-a. The "privilege tax," as used in these rules. shall be understood to mean the privilege tax upon persons, firms and corporations imposed by Chapter 5, Acts Extraordinary Session of the Legislature of 1919. Said tax is construed as being for the particular privilege of transporting or conveying oil or gas, or both, within the State of West Virginia, for sale to consumers within or without the state, or use by the reporting company or others within or without the state in the making of any products derived therefrom, by means of pipe lines, owned, leased or operated the aggregate length of which, including trunk, gathering and distributing lines, is ten miles or more, the amount of such tax to be the equivalence of two cents for each barrel of oil or petroleum, or the products and distillates thereof, and one-third of one cent for each thousand cubic feet of natural gas, so transported or conveyed.

4. THE MEASURE FOR THE TAX.

4-a. The quantity of oil and gas to be used as the measure for the privilege tax against a particular company shall be that quantity which has, but once, passed through the owned, leased or operated pipe lines of that company within the State of West Virginia during the year for which return is required, for sale to consumers within or without the state, or use by the reporting company or others within or without the state in the making of any products derived therefrom.

5. WHO SUBJECT TO PAY TAX.

5-a. Every person, firm, partnership, corporation, joint-stock company and association which, during the year for which return is required, transported or conveyed within the State of West Virginia crude oil or petroleum, or the products and distillates thereof, or natural gas, or both, by means of pipe lines owned, leased or operated the aggregate length of which, including trunk, gathering and distributing lines, was ten miles or more is subject to pay the privilege tax.

6. WHO EXEMPT FROM PAYMENT OF TAX.

6-a. Persons, etc., transporting oil or gas within the State of West Virginia during the year for which return is required by means of pipe lines owned, leased or operated the aggregate length of which, including trunk, gathering and distributing lines, was less than ten miles, are exempt under section one of the law.

7. WHO TO MAKE RETURNS

7-a. Every person, firm, partnership, corporation, joint-stock company and association engaged in the transportation of oil or gas within the State of West Virginia, by means of pipe lines owned, leased or operated is liable for the filing of returns under the privilege tax law, regardless of whether the mileage of its entire system is less or more than ten miles.

7-b. Companies whose entire system of pipe lines is less than ten miles in length, and, therefore, exempt from payment of the privilege tax by the provision contained in section one of the law shall, by affidavit, at the request of the Commission, establish their right to the exemption provided, in which case it will not be sufficient to merely declare that they are exempt, but they must show the mileage of their entire system. A satisfactory return from such companies may be made on the prescribed form (Form 200) by simply filling in the name of the company, answering Question 3, leaving Questions 4, 5, 6 and 7 blank and swearing to the return as thus made.

7-c. Subsidiary Companies.—Every company liable for the privilege tax, regardless of its relation to another company, is held to be a separate and distinct entity, and, unless it comes within the class of companies specifically exempted by section one of the law, must make a separate and distinct return, complete in every detail.

8. TIME FOR FILING RETURNS

8-a. Section 3 provides that all companies liable to the privilege tax shall, within sixty days after the 1st day of July, 1919, and within sixty days from the first day of July in each year thereafter, deliver its return in writing to the State Tax Commissioner.

8-b. The commissioner is not authorized to extend the time for filng returns.

8-c. If a return is made and placed in the United States mails, properly addressed, and postage paid, in ample time, in due course of mails, to reach the office of the Commissioner on or before August 30th, and should the return not be actually received until subsequent to that date, it will be considered and treated as having been filed within the prescribed time.

9. MANNER IN WHICH RETURNS ARE TO BE MADE

9-a. Blank forms, etc.—Under the authority conferred by the act, forms of return have been prescribed. Failure on the part of any company liable to the privilege tax to receive a prescribed blank form will not excuse it from making the return required by law, or relieve it from any penalties for failure to make the return in the prescribed time. Companies not supplied with the proper forms for making the return should make application therefor to the Commissioner in ample time to have its return prepared, verified and filed on or before August 30th. Each corporation should carefully prepare its return so as to fully and clearly set forth the data therein called for.

9-b. The books of a company are assumed to show the facts as to the quantities of oil or gas transported. Hence they will be taken as a guide in determining the quantities to use as a measure for the privilege tax.

W. S. HALLANAN, State Tax Commissioner.

A true copy. Test:

Wm. R. Stansbury, Clerk of the Supreme Court of the United States. (Seal of the Supreme Court of the United States.)

(Here follows exhibit marked side folio pages 281 and 282)

[fol. 283] EXHIBIT "EUREKA DECREE"

STATE OF WEST VIRGINIA:

AT A CIRCUIT COURT FOR KANAWHA COUNTY HELD AT THE COURT HOUSE THEREOF ON THE 8TH DAY OF SEPTEMBER, 1920

In Chancery. No. 5434

THE EUREKA PIPE LINE COMPANY, a Corporation,

vs.

WALTER S. HALLANAN, State Tax Commissioner of the State of West Virginia, and E. T. England, Attorney General of the State of West Virginia

This cause having been submitted to the Court for final consideration, decision and decree, and the Court having taken time to consider thereof, and now being advised of its judgment herein, and being of the opinion to find for the plaintiff, for reasons set forth in a written memorandum prepared by the Court and this day presented, and now filed herein and made part of the record hereof, which is in words and figures following, that is to say:

[fol. 284] IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

In Chancery. No. 5434

EUREKA PIPE LINE COMPANY

vs.

WALTER S. HALLANAN, State Tax Commissioner, and E. T. ENGLAND, Attorney General

MEMORANDUM BY THE COURT

RUMMEL, Judge:

The bill of complaint in this cause, brought by the Eureka Pipe Line Company, a West Virginia Corporation, has for its object the enjoining of the defendants, the State Tax Commissioner and Attorney General of the State, from enforcing as against the plaintiff an Act of the Legislature known as Chapter 5 of the Acts of the Extraordinary Session of said Legislature held in 1919.

Said Act, so far as its provisions are pertinent to an examination of the questions here raised, reads as follows:

"No person, firm or corporation, hereinafter called Company, after the first day of July, One Thousand Nine Hundred and Nineteen, shall engage in or continue in the business of the transportation of crude oil or petroleum, or the distillates thereof, or of natural gas, by means of pipe lines, without the payment of an annual privilege tax hereby imposed for engaging in such business; provided, however, that northing contained in this act shall apply [fol. 285] to any person, firm or corporation engaged in the business aforesaid where the crude oil, petroleum or distillate thereof, or natural gas is by the entire system of such person, firm or corporation, transported a distance or less than ten miles.

Every person, firm and corporation engaged in this state in the transportation of either crude oil or petroleum, or the products and distillates thereof, or of natural gas, or both, by means of pipe lines for sale to consumers within or without the state or use within or without the state in the mak-

ing of any product derived therefrom, shall pay to the state, as an annual privilege tax for engaging in such business in the state, two cents for each barrel of crude oil or petroleum, or the distillates thereof, and one-third of one cent for each thousand cubic feet of such natural gas as is so transported or conveyed within this state, provided, that only one such tax, annually, shall be required to be so paid."

(Then follow provisions requiring returns to be made, and the tax to be assessed by the State Commissioner, etc.)

The bill alleges that acting under the authority of said act, the Tax Commissioner has prescribed forms for returns to be made by persons and companies affected thereby, and has issued rules and regulations for ascertaining and assessing the tax imposed by the act; and said Tax Commissioner has also informed the plaintiff that it is within the terms of said act and must comply with all the requirements thereof, and file the return above mentioned; to the [fol. 286] end that an assessment may be made against it as provided in the act. These allegations are admitted by the joint answer filed.

The bill, as ground for the injunction sought, asserts that said act, referred to therein as the "Transportation Tax Act," is unconstitutional, illegal, invalid and void, and alleges numerous constitutional objections thereto, which will be hereinafter enumerated. It sets out at great length the history and nature of the plaintiff's business, and shows that this company owns approximately 4,500 miles of pipe line, all within the State of West Virginia, and used in the transportation and incidental storage of crude oil for hire; that the oil handled by the plaintiff is practically all produced in West Virginia, Pennsylvania, Ohio, Kentucky and Illinois, and in what is known as the Mid-Continent field which includes the States of Kansas, Oklahoma and part of Texas, that the plaintiff's lines have been used almost exclusively for transporting oil, by means of its lines and those of connecting carriers, in interstate commerce, for delivery to refineries situated in other states; that oil is delivered to the plaintiff at the various state lines by connecting carriers; and is in turn delivered by the plaintiff to other connecting carriers at the West Virginia-Pennsyl-

vania state line, the flow of oil past all these points being continuous, and the plaintiff's lines being part of an extensive system extending through a large number of states; that oil produced in other states, as well as in West Virginia, is consigned by the owners to refineries in other states, and passes through the plaintiff's lines and those of connecting carriers, the plaintiff being a common carrier, [fol. 287] and such oil being transported under tariffs on file with the Interstate Commerce Commission; in addition to such oil transported to points outside the state, the plaintiff also makes deliveries within the state to refineries at Parkersburg, St. Marys and Falling Rock, and at Littleton and Morgantown to connecting carriers for transportation out of the state; that all oil received from outside the state during the year ending July 1, 1919, was transported through the state and re-delivered at the Pennsylvania line for transportation and delivery wholly without the state, if inferentially appearing that all oil delivered by the plaintiff at points in the state, as aforesaid, was produced within the state. It is alleged that the plaintiff transported during the year in question an aggregate of 22,531,315.06 barrels of crude oil, made up as follows:

(1) Produced in West Virginia, transported and delivered therein	1,239,099 55 bbl.
(2) Produced in West Virginia, transported to Pennsylvania State line and delivered to connecting carriers	4,637,888 68 "
(3) Produced in West Virginia, transported therein, and delivered in West Virginia to connecting carriers for further transportation to points outside of state	638,590 79 "
(4) Produced outside of West Virginia, transported across the state, and delivered at Pennsylvania state [fol. 288] line to connecting carriers	16,015,736 04 "
Total	22,531,315 06 bbl.

The bill sets out the nature and amounts of the various property taxes, license taxes, and excise taxes which the

plaintiff is required by the laws of the state to pay, in addition to the privilege tax hereby sought to be enjoined, which taxes need not be here noticed in detail; and the allegation is made, in this connection, that the tax in question, while purporting on its face to be a privilege tax, is in fact and in effect a tax upon freight in transit, to-wit: the crude oil handled by the plaintiff, most of which was transported in interstate commerce.

The plaintiff further avers that its total net income for the year ending June 30, 1919, was $640,768.22, and that its net income for the calendar year 1919 will probably be considerably less than $450,000; while the tax proposed to be assessed under said Transportation Tax Act, namely, two cents per barrel of oil transported during the year ending July 1, 1919, will amount to $450,628.30.

The grounds for the attack thereupon made by the bill upon the validity of the act in question may be roughly summarized as follows:

(1) The act burdens and attempts to regulate interstate commerce.

(2) The act attempts to lay imposts and duties on imports and exports.

(3) The act deprives the plaintiff of its property without due process of law, and denies plaintiff the equal protection of the laws.

[fol. 289] (4) The act imposes a tax not equal and uniform.

(5) The act constitutes a local or special law forbidden by the state constitution.

(6) The penalties imposed by the act are excessive.

(7) The act is confiscatory of plaintiff's property.

The charge is made that in these respects, and in other respects also enumerated, the act violates various provisions of the state and federal constitutions, and is therefore null and void. The prayer of the bill, therefore, is that the defendants be enjoined from enforcing the law, and the tax provided thereby, as against the plaintiff.

The defendants, by their joint answer filed, aver that the act of the Legislature in question is a valid law of the state, and that the plaintiff is within the terms thereof and sub-

ject to the privilege tax thereby imposed; while disclaiming any purpose to enforce against the plaintiff any penalties, fines or forfeitures, which under the terms of the act might accrue pending the present litigation to secure an adjudication as to its validity.

They deny that the Transportation Tax Act is unconstitutional illegal, invalid, or void, and deny that the State of West Virginia by said act seeks to levy any tax or impose any burden upon oil or gas moving in interstate commerce. They aver that, properly construed, the act forbids persons, firms and corporations engaging in the business of interstate transportation of oil or gas without the payment of the privilege tax prescribed, the amount of which tax is [fol. 290] measured by the number of barrels of oil, or thousand cubic feet of gas, transported within the state. They contend that the state has power to lay a privilege tax upon such business and to measure it in that way.

The defendants further allege that the pipe lines connecting with plaintiff's lines, mentioned in the bill as located in adjoining states, are owned by corporations affiliated with the plaintiff and with each other, engaged in a single transportation enterprise of which the plaintiff's system is a part, and that all of said corporations are subsidiaries of, and controlled by, the Standard Oil Company of New Jersey.

They further charge that the oil received by the plaintiff from other states through connecting carriers goes into a common reservoir and is mixed and mingled with the oil produced in this state, and which is at the same time being stored or transported in local or intrastate commerce, and that such foreign oil thereby loses its identity as such, and ceases to be an article of interstate commerce.

They set out that on September 16, 1919, the Public Service Commission of West Virginia authorized the plaintiff to increase its rates for gathering, transporting and delivering oil in this State from twenty cents per barrel to thirty cents per barrel, which increase has been in effect since September 20, 1919. They deny that the proposed tax is confiscatory, and make the contention that if the rates now charged by the plaintiff are found too small to be remunerative, after paying the tax, further increases may be secured.

[fol. 291] The cause has been matured by appearance and the taxing of depositions, and by agreement has been fully

heard and submitted for final decision upon the application for injunction. The points of law, as well as of fact, have been elaborately argued by able counsel on both sides; and the importance of the controversy to the state and to those companies which may be affected by the Transportation Tax, as well as the intricacy of the questions involved, have dictated that the Court prepare and file this memorandum.

Coming at once to what our consideration has convinced us is the leading and pivotal question in the case, we shall consider first whether the proposed tax measure constitutes an unwarranted interference with interstate commerce. Upon this question, undoubtedly, the decisions of the Supreme Court of the United States are controlling. We fail to find, however, among the numerous decisions of that Court affirming or denying the constitutionality of tax regulations imposed by the various states, any utterance respecting a law precisely like the one now in controversy. It seems conceded that this law is distinguishable in character from any that has heretofore been before the Courts.

It is true, numerous decisions may be found, and they are cited and relied on by the respective parties here, on the one hand upholding and enforcing tax laws and other state regulations somewhat similar to the one here in question, and on the other hand denouncing as unconstitutional, null and void, other laws likewise very similar in import. The difficulty arises in deducing from these decisions the prin- [fol. 292] ciple upon which these distinctions are made, and the principle which should govern us here.

The principle is enunciated in numerous cases by the Supreme Court of the United States that no state license or indirect taxation of any kind, nor any system of state regulation, can be imposed upon inter-state commerce, as this would interfere with the power of Congress in the regulation of such commerce. Among leading cases upholding this doctrine in various phases, may be cited the following:

Crutcher vs. Kentucky, 141 U. S., 47;
Leloup vs. Port of Mobile, 127 U. S., 640;
Robbins vs. Shelby Co. Taxing Dist., 120 U. S., 489;
Western Union T. Co. vs. Kansas, 216 U. S., 1;
Moran vs. New Orleans, 112 U. S., 69;
Galveston &c., Ry. Co., vs. Texas, 210 U. S., 217;
Oklahoma vs. Wells Fargo & Co., 223 U. S., 298.

On the other hand, numerous decisions have held not only that the property of a corporation engaged in interstate business is not exempt from taxation by a state, but also that a state may impose a license or other tax upon such corporation for the privilege of doing business within the state, and may measure the amount of such tax by reference to property used in interstate commerce, or incomes derived from interstate commerce. This distinction between the subject of the tax and the measure of the tax appears to have been recognized in the following cases, among others:

[fol. 293] Main vs. Grand Trunk R. Co., 142 U. S., 217;
Flint vs. Stone Tracy Co., 220 U. S., 107;
R. R. Co. vs. Botkin, 240 U. S., 227;
Maxwell vs. Bugbee, decided October 27, 1919;
American Mfg. Co. vs. St. Louis, decided June 9, 1919;
U. S. Express Co. vs. Minnesota, 223 U. S., 335.

The difficulty of reconciling these two doctrines has been well expressed by Woods, J., in the case of Postal &c., Cable Co. vs. Adams, 71 Miss., 555 whose language in this connection may be adopted herein:

"The record presents a Federal question, and we acknowledge ourselves bound to follow the decisions of the Court of last resort of the United States, if that Court shall be found to have adjudicated it. Our difficulty arises from our inability to say with confidence what the Supreme Court of the United States has finally determined in cases of like character. The reported decisions of that Court are so irreconcilable in their variances and seeming conflicts, in our view, that it is with diffidence that the impartial student can affirm what will or will not follow in any given state of case. If the line of decisions adopted in Pensacola Teleg. Co. vs. Western U. Teleg. Co., 96 U. S., 1, 24 L. Ed., 708; Western Union Teleg. Co. vs. Texas, 105 U. S., 460, 26 L. Ed., 1067; Gloucester Ferry Co. vs. Pennsylvania, 114 U. S., 196, 1 Inters. Com. Rep., 382, 5 Sup. Ct. Rep., 826; Pickard vs. Pullman Southern Car Co., 117 [fol. 294] U. S., 34, 6 Sup. Ct. Rep., 635; Robbins vs. Shelby County Taxing Dist., 120 U. S., 489, 1 Inters. Com. Rep., 45, 7 Sup. Ct. Rep., 592; Leoup vs. Port of Mobile, 127 U. S.,

640, 2 Inters. Com. Rep., 134, 8 Sup. Ct. Rep., 1380; and Crutcher vs. Kentucky, 141 U. S., 47, 11 Sup. Ct. Rep., 851—stood alone, the settlement of the controversy in the case at bar would be made without great difficulty in accordance with the contention of the appellant. If we had for our guidance only the other line of decisions, embracing State Tax on Railway Gross Receipts, 15 Wall., 284, sub nom. Philadelphia & R. R. Co. vs. Pennsylvania, 21 L. Ed., 164; Osborne vs. Mobile, 16 Wall., 479, 21 L. Ed., 470; Wiggins Ferry Co. vs. East St. Louis, 107 U. S., 365, 27 L. Ed., 419, 2 Sup. Ct. Rep., 961; Maine vs. Grand Trunk R. Co., 142 U. S., 217, 35 L. Ed., 994, 3 Inters. Com. Rep., 807, 12 Sup. Ct. Rep., 121, 163; Ficklen vs. Shelby County Taxing Dist., 145 U. S., 1, 36 L. Ed., 501, 4 Inters. Com. 79, 12 Sup. Ct. Rep., 810; St. Louis vs. Western U. Teleg. Co., 148 U. S., 92, 37 L. Ed., 380, 13 Sup. Ct. Rep., 485—the right of the revenue agent of the state to maintain this suit successfully would seem to be well established in accordance with the views of the counsel for the appellee."

It may be noted that in the case just cited the state Court sustained the tax in question, and the case was later affirmed by the Supreme Court of the United States. 155 U. S., 688.

But it is apparent when all of these cases are read together, that although the state may inaugurate such a sys-[fol. 295] tem of taxation, to be valid it must not in its practical effect and operation burden interstate commerce.

The Transportation Tax Act now in question, so far as it affects the plaintiff, seeks to levy a license tax upon the privilege of transporting oil by means of pipe lines.

Let us grant the contention of defendants that the tax is upon the privilege of so transporting oil within the state. The amount of the tax is sought to be measured by a rate per barrel of all such oil so transported within the state. But, admittedly, very much the greater part of the oil so transported is moving in interstate commerce. The law imposes in practical effect a tax and burden upon each barrel of oil transported, whether in interstate or intrastate commerce. It is argued that the tax is only upon a certain privilege; but it is seen that the amount of the tax depends absolutely upon the quantity of oil transported.

If the amount of oil transported is great, the tax for the privilege is large; if the amount is small, the tax for the privilege is decreased in proportion. And this oil which is thus taxed, or which thus fixes the amount of the privilege tax, is chiefly oil which is concededly moving in interstate commerce. In our opinion, this too closely approximates a direct tax upon the oil itself, or the business of carrying the same in interstate commerce; and this we understand is forbidden by the federal constitution, as construed in the decisions of the Supreme Court of the United States above cited, and numerous others.

It is true that not all of the oil transported by the plain- [fol. 296] tiff by means of pipe lines is moving in interstate commerce. A considerable quantity (in the statement above for the year ending July 1, 1919, it is 1,239,-099.55 barrels) is produced in West Virginia, and transported, sold and used in this state. As to such oil it would seem to be competent for the state to impose a privilege tax such as is levied by this law. But has the state done this by the act in question? If it can be contended that the tax affects this particular oil it is only incidental to the like tax imposed upon the whole body of oil transported. It is plain the legislature did not mean to distinguish as between the two classes of oil, for the act makes no attempt at a division. We are not able to say from an inspection of the act whether or not the legislature would have imposed the tax upon the privilege of handling this intrastate oil alone had it been exempting the balance of the oil when framing the law, as we think it should have done. Whether it would have made the tax applicable to the West Virginia oil alone, no one can say: and this we understand to be the test of whether or not the act is divisible. Eckhart vs. State, 5 W. Va., 515; Robertson vs. Preston, 97 Va., 296; Trimble vs. Comm., 96 Va., 818.

The conclusion we reach is that the Transportation Tax Act is too plainly in effect a tax and burden upon that which the state has no power to tax or regulate, namely, interstate commerce. And in so far as the law affects intrastate commerce, it is only incidentally, and the two are so closely interwoven in the act, which treats them as one, that the Court can not separate the taxes imposed upon [fol. 297] them and say that one is constitutional and the other unconstitutional.

This conclusion renders unnecessary an examination of the numerous other grounds advanced for invalidating the law, or passing upon the motion to strike from the bill the words "incidental storage" wherever they appear.

A decree may be prepared, restraining the defendants from enforcing the Transportation Tax Act against the plaintiff in any respect. September 8th, 1920.

It is therefore adjudged, ordered and decreed that the defendant Walter S. Hallanan, State Tax Commissioner of the State of West Virginia, and all persons acting under his authority or direction, be and are perpetually inhibited, enjoined and restrained from enforcing, or attempting to enforce, in any manner or respect, the said Transportation Tax Act, being Chapter 5 (House Bill No. 3) of the Acts of the Legislature of the State of West Virginia, extraordinary session held in 1919, or any part of said Act, against plaintiff, and from requiring it to make any return or report to him of the amount of oil or gas transported by it, and from assessing upon or against it any tax thereunder, and from collecting or proceeding to collect from it, in any manner, any tax thereunder, or any penalty or fine therein prescribed, and that the defendant E. T. England, Attorney General of the State of West Virginia, and all persons acting under his authority, advice or direction, be and are perpetually inhibited, enjoined and restrained from enforcing, or attempting to enforce, any and every part of said Act, against plaintiff, and from [fol. 298] proceeding to have plaintiff, its property, agents or employees, held liable for any tax, penalty or any fine therein prescribed, and that the said act be, and the same is hereby, decreed herein to be void as to the plaintiff, its property, franchises and business.

State of West Virginia,
County of Kanawha, ss:

I, W. L. Price, Clerk of the Circuit Court for said County and in said State, do hereby certify that the foregoing is a true copy from the record of said Court.

Given under my hand and seal of said Court this the 5th day of January, 1926.

W. L. Price, Clerk Circuit Court Kanawha County, West Virginia. (Seal.)

[fol. 299] EXHIBIT "OPINION BY MR. JUSTICE HOLMES"

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1921

No. 255

THE EUREKA PIPE LINE COMPANY, Plaintiff in Error,

vs.

WALTER S. HALLANAN, State Tax Commissioner, and E. T. ENGLAND, Attorney General of the State of West Virginia

In Error to the Supreme Court of Appeals of the State of West Virginia

[December 12, 1921]

Mr. Justice HOLMES delivered the opinion of the Court:

This is a bill to prevent the enforcement against the plaintiff of a statute of West Virginia that forbids engaging in the business of transporting petroleum in pipe lines without the payment of a tax of two cents for each barrel of oil transported. Acts of 1919, Extraordinary Session, Ch. 5. It is set up that the statute is contrary to the Constitution of the United States in several ways, one of these being that as applied to the plaintiff it imposes a tax upon commerce among the States. The plaintiff owns a system of pipe lines in West Virginia connecting with other pipe lines in Ohio and Kentucky on the west and in Pennsylvania on the east of the State. Through the plaintiff's pipes oil flows in a continuous stream to the State line and beyond—in all amounting to over twenty-two million barrels in the year ending June 30, 1919. There are four [fol. 300] grades of the oil thus moved. Two of these are produced partly in West Virginia. According to the figures accepted by the defendants in error, out of a total 9,076,599.83 barrels of the Pennsylvania grade 6,510,081.51 barrels came from this State, upon over six millions of which the plaintiff made a charge of twenty, later thirty, cents for gathering, on an interstate tariff and also under a local statute. But all the oil of the same grade was mixed, regardless of source, and of the Pennsylvania grade

only 1,239,099.55 barrels were used in West Virginia. It is admitted that the tax may be levied in respect to the last item, but the question before us is whether the tax can be laid upon the whole product of the State upon which was imposed the gathering charge.

The Circuit Court of the State held that the statute was void. The Supreme Court of Appeals sustained it so far as the oil produced in West Virginia was concerned. But as the Court declared that the act should be construed to apply only to commerce within the State it is urged that there is no jurisdiction here of the writ of error because there is no question as to the validity of a statute so limited. The plaintiff in error also applied for a writ of certiorari so that the objection would be immaterial were we not required to determine upon which proceeding the decree should issue. In view of that necessity we dispose of the matter before going further. Upon the declaration of the Court we may conjecture that if it had considered that the oil in question moved in interstate commerce it would have agreed with the Court below, and on this ground it is argued that the mistake, if any, was not in approving the [fol. 301] statute but in the Court's conception of interstate commerce. But we must look at what the Court has done, not at its mode of reaching the result. What it has done is to decide that the statute covers all the oil produced in West Virginia and that it shall be upheld in so doing. The nature of the mistake that induced the act is immaterial. A case would not be withdrawn from the jurisdiction of this Court in error by a declaration that a statute was addressed only to intrastate commerce if it was applied wholesale to freight passing across the continent. The fact that the error was less does not affect the principle involved. But furthermore the Court only confined the statute to intrastate commerce 'as above defined,' that is, to commerce that embraced what the plaintiff carried on.

We return to the facts affecting the merits. When oil is received from the producer he receives a credit on the books of the plaintiff pipe line, and thereafter is charged for storage, as it is called, the plaintiff being required by the laws of West Virginia to keep enough oil in its tanks and pipes to satisfy such credits. Code, 1913, § 3864. If

the producer desires to deliver oil outside the State it hands to the pipe line company what is called a tender of shipment for so many barrels of the specified kind of oil naming the consignee, and expressed to be subject to an identified tariff filed with the Interstate Commerce Commission. This is said to be a joint tariff in which the connecting carriers share, but they do not share in the twenty or thirty cents charged for gathering the oil. The argument for the defendants in error of course is that the producer is free to sell within or without the State and that the movement of gathering having taken place before any [fol. 302] order is given and while the producer still can do as he likes, it must be regarded as intrastate.

It does not seem to matter for the question before us, whether the delivery to the pipe line be regarded as making it the owner of what it receives and a debtor for the amounts, as in the case of a bank, or as akin to those transactions that are held to make the recipient a bailee of the mingled mass and the bailors tenants, in common, as seems to have been assumed. Whether debtor or bailee the pipe line controls the movement of any specific oil in its hands and the bailor assents to its doing so. The bailor assents to its becoming part of a stream that is pouring through and out of the State. Its only right is to call on the pipe line to direct a portion of that stream. So far as the oil that it calls for goes out of the State with the general current it seems to us not to be distinguishable from the rest admitted to move in interstate commerce. No bailor has title to any specific oil, and to deny the character of interstate commerce to the whole steam simply because some one might have called for a delivery that probably would have been made from it in an event that did not happen, is going too far. The charges for gathering and storage seem to us not to affect the case. The storage merely means that enough oil must be kept in the tanks and pipes to satisfy credits. The oil runs into a tank on one side and out on the other. The tank be regarded as a pipe of larger size. Whether the plaintiff in error was right or wrong in relying upon State law for its gathering charge its attitude does not matter here.

[fol. 303] As has been repeated many times, interstate commerce is a practical conception, and, as remarked by

the court of first instance, a tax to be valid 'must not in its practical effect and operation burden interstate commerce.' It appears to us as a practical matter that the transmission of this stream of oil was interstate commerce from the beginning of the flow, and that it was none the less so that if different orders had been received by the pipe line it would have changed the destination upon which the oil was started and at which it in fact arrived. We repeat that the pipe line company not the producer was the master of the destination of any specific oil. Therefore its intent and action determined the character of the movement from its beginning, and neither the intent nor the direction of the movement changed.

Decree reversed. Writ of certiorari denied.

A true copy. Test:

——— ———, Clerk Supreme Court U. S.

[fol. 304] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1921

No. 255

THE EUREKA PIPE LINE COMPANY, Plaintiff-in-Error,

vs.

WATER S. HALLANAN, State Tax Commissioner, and E. T. ENGLAND, Attorney General of the State of West Virginia

In Error to the Supreme Court of Appeals of the State of West Virginia

[December 12, 1921]

Mr. Justice CLARKE, dissenting:

I greatly regret that I cannot concur in the opinion and judgment of the Court in this case, and I think it is my duty to state briefly as I may the grounds of my dissent.

The Eureka Pipe Line Company is a West Virginia corporation, owning pipe lines which are wholly within that State. Of the twenty-two and a half millions of barrels of oil which the company transported in the year in con-

troversy, ending July 1, 1919, six and one-half millions of barrels were produced in West Virginia and the remainder came from other southern and western States. Of that produced in West Virginia, one and one-quarter millions of barrels were delivered to refineries in that State, and the balance was delivered to connecting carriers, at the state line, for interstate transportation. There is no controversy as to the oil from other States or as to the state-produced oil that was delivered to refineries in the State, but to the [fol. 305] holding of the Court that the state-produced oil, which ultimately went out of the State, moved in interstate commerce from the time it left the walls, I cannot agree.

The company owns about forty-three hundred miles of pipe line in West Virginia, all of which, with the exception of a few hundred miles of main or trunk line, is used for the purpose of "gathering" oil from twenty-seven counties of the State,—it covers them as with a network.

The admitted method of doing business was as follows: When the oil was delivered by the producer to the company, it issued to him what is called a "credit balance," which was a paper reciting that he had credit on its books for the designated number of barrels of oil and it contained a blank for the entry of "storage charges." The oil thus delivered moved to some one of several points on the main lines of the company, all within the State and designated in the record as "central points," or "delivery points," or "tariff points." This movement of the oil was under a tariff filed by the company with the State Public Service Commission, which, in the year under discussion, read:

"Local Tariff.—The rates named in this tariff are for intrastate transportation of crude petroleum."

"For gathering and transporting oil from wells to delivery points within the State of West Virginia, 20 cents. Storage, per day, 1/40 cents."

Thus, by the contract between the parties, the oil was received for transportation to points within the State only. No consignee or destination was named, but, on the contrary, a charge was provided for indefinite storage, which the record shows was often paid, and the parties united [fol. 306] in calling this part of the transportation a "Local and an intra-state shipment."

Further, in order to give the oil any intra-state delivery the owner was required to issue to the company a paper called a "delivery order," but, if he wished it to move in interstate commerce he must deliver to the company an entirely different order called a "tender of shipment," which was a paper naming a place of delivery outside the State and reciting that the transportation should be under a designated interstate tariff.

All transportation of the oil before the issuing of the "tender of shipment" was under the local tariff described. It was not released for transportation or delivery of any kind, either state or interstate, until a "delivery order" or a "tender of shipment" was delivered to the company by the owner and when the latter was delivered the oil moved thereafter under the terms of another, a joint interstate tariff, filed with the Interstate Commerce Commission at Washington by the Eureka Company, in conjunction with other companies owning lines connecting with its mains at the state line.

To this we must add that, as a West Virginia corporation, the Eureka Company was subject to the statute of that State, requiring that any company engaged in the transportation of petroleum in the State shall not in any manner ship or transport, or permit to be shipped or transported, or in any manner remove from the tanks or pipe lines of such company any petroleum without a written order (a "delivery order" for intrastate, or a "tender of shipment" [fol. 307] for interstate, delivery); and also that "every such company shall, at all times, have in its tanks and pipes an amount of oil equal to the aggregate outstanding * * * credit balances on the books thereof."

If this were all there was in the transaction, plainly the oil could not be considered as moving in interstate commerce until a "tender of shipment" was issued, for until that time it was without a consignee or destination and was held under a local tariff, providing a rate of twenty cents per barrel for intra-state transportation, and a charge for storage.

But the Court concludes that this plainly intrastate shipment is converted into an interstate shipment by a single circumstance, viz: that when the oil, thus moving under a local tariff for a local charge, reached the trunk line, if that

line happened to be "running" oil of the same kind and quality, the local oil was turned into the main and was at once moved out of the State, even though a "tender of shipment" may not have been issued to release it and give it destination. It is to be noted, however, that if the company was not "running" oil of the like kind and quality when the local oil reached the trunk line, it was held at the junction (tariff point) until like oil was to be "run" again, when it was sent forward. * * * This may have been for a day or for two weeks.

This circumstance, that the oil became under these conditions "a part of a stream that is pouring through and out of the state," it is held, gave the shipment an interstate character from the moment it left the wells. This holding is adopted, says the Court, as a "practical con-[fol. 308] ception" of the matter, but it is precisely because it seems to me a too highly technical conception to find place in the word of practical business, that I dissent from such a conclusion. It is true that the physical oil moved, as stated, out of the State, but its removal without a tender of shipment caused no reduction whatever in the volume of like oil in the State; that volume, by the statute, by the contract of the parties and by the tariff filed by the company, must continue undiminished to meet all outstanding "credit balances" and the evidence of the assistant superintendent of the company is that this requirement was constantly complied with. The conclusion of the Court, therefore, allows the mere business convenience of the company (it saves storage tankage) to convert into interstate commerce that which all the parties, by their contract and conduct treated, and charged and paid for, as an intra-state transportation, and thereby subordinates, in my judgment, the substance to the merest form of the transaction.

Believing, as I do, that this transporting of oil over approximately four thousand miles of "gathering" lines in the State to the trunk lines, was a local shipment, as the parties all declared it to be, I think the State should be permitted to impose a reasonable license or occupation tax upon the company engaged in such extensive state activity, measured by the volume of such traffic, and that the judgment of the Supreme Court of Appeals of West

Virginia restraining the statute to this scope should be affirmed.

For the reasons stated in the dissenting opinion of Mr. Justice Brandeis in No. 30 of this term, Dahnke-Walker Milling Company, Plaintiff in Error vs. C. T. Bondurant, [fol. 309] I think this case is subject to review in this Court only upon writ of certiorari, and that, therefore, the motion to dismiss the writ of error should have been granted, but it has seemed to me important to discuss, as I have done, the question of interstate commerce involved.

Mr. Justice Pitney and Mr. Justice Brandeis join in this opinion as to the merits of the controversy. Mr. Justice Brandeis also concurs as to the question of jurisdiction.

A true copy. Test:

—— ——, Clerk Supreme Court U. S.

[fol. 310] Exhibit "Opinion by Mr. Chief Justice Taft"

Supreme Court of the United States, October Term, 1922

Nos. 569 and 885

No. 569

Walter S. Hallanan, State Tax Commissioner, and E. T. England, Attorney General of West Virginia,

vs.

The Eureka Pipe Line Company

On Petition for a Writ of Certiorari to the Supreme Court of Appeals of West Virginia

No. 885

WALTER S. HALLANAN, State Tax Commissioner, and E. T. ENGLAND, Attorney General of West Virginia,

vs.

THE EUREKA PIPE LINE COMPANY

In Error to the Supreme Court of Appeals of West Virginia

[April 9, 1923]

Mr. Chief Justice Taft delivered the opinion of the Court:

This is an effort by writ of error, and if that is inappropriate for the purpose, by an application for a writ of certiorari, to review the action of the Supreme Court of Appeals of West Virginia in the judgment which it entered in avowed and attempted compliance with the judgment of this court in the case on writ of error sub nomine Eureka Pipe Line Co. v. Hallanan, et al., 257 U. S. 265. It is contended by the state authorities seeking review here that the Supreme Court of Appeals did not enter the judgment [fol. 311] required by our mandate and that we should in some appropriate way direct that court specifically what judgment it should enter.

A summary of the litigation must needs be made in order that the controversy may be understood and decided.

The Pipe Line Company filed a bill against the State Tax Commissioner and other state authorities to enjoin them from enforcing a statute of the State which forbade anyone to engage in the business of transporting petroleum in pipe lines without the payment of a tax of two cents for each barrel of oil transported. The Pipe Line Company owned a system of pipe lines by which it transported 22 millions of barrels in the year ending June 30, 1919. Of this, it was admitted that 1,239,000 barrels had their origin in West Virginia, and their destination there, and that the privilege of transporting that amount might be taxed; but it was insisted that the remainder was a stream of interstate commerce, the privilege of conducting which could not be taxed under the commerce clause of the Federal Constitution.

The Circuit Court in which the bill was filed and the causes heard held that the remainder was interstate commerce and no privilege tax could be imposed on a pipe line company engaging in it. It conceded that it would be competent for the Legislature to collect a privilege tax for the purely intrastate transportation of the 1,239,000 barrels already mentioned, but it inquired whether the State had done this by the act in question, and said:

"If it can be contended that the tax affects this particular oil it is only incidental to the like tax imposed upon the [fol. 312] whole body of oil transported. It is plain the legislature did not mean to distinguish as between the two classes of oil, for the act makes no attempt at a division. We are not able to say from an inspection of the act whether or not the legislature would have imposed the tax upon the privilege of handling this intrastate oil alone, had it been exempting the balance of the oil when framing the law, as we think it should have done. Whether it would have made the tax applicable to the West Virginia oil alone, no one can say; and this we understand to be the test of whether or not the act is divisible. Eckhart vs. State, 5 W. Va., 515; Robertson vs. Preston, 97 Va., 296; Trimble vs. Comm., 96 Va., 888."

Accordingly the Circuit Court held the whole act bad and granted an injunction against enforcing it against the Pipe Line "in any respect."

On appeal the Supreme Court of Appeals held that the fact was to be construed as applying to pipe lines only so far as they were engaged in intrastate commerce, and that it did not apply to transport of oil in intrastate commerce. It held, however, that oil originating in West Virginia, a large part of which was ultimately carried out of the State but the destination of which was undetermined because its owners might withdraw it from the line at any point within the State, was intrastate commerce and was a proper basis for the privilege tax under the law. Accordingly in so far as the decree of the Circuit Court enjoined collection of a privilege tax measure by intrastate commerce in oil as thus determined, it was reversed. In this Court it was held that [fol. 313] oil produced in West Virginia and constituting in fact a stream of oil flowing out of the State was interstate

commerce even though those who delivered the oil to the company for transportation might have diverted it from the interstate commerce stream, and though in comparatively small quantities some oil was thus diverted.

Accordingly the decree of the Supreme Court of Appeals was reversed, and the cause was remanded to that court for further proceedings not inconsistent with the opinion of this Court. That court then entered the following decree entitled in the cause:

"Upon an appeal from a decree of the Circuit Court of Kanawha County pronounced on the 8th day of September, 1920.

"The Court having maturely considered the mandate of the Supreme Court of the United States filed and entered of record in this cause and the record of the decree aforesaid, is of opinion that there is no error in said decree. It is, therefore, adjudged, ordered and decreed that the decree of the Circuit Court of Kanawha County, pronounced in this cause on the 8th day of September, 1920, be and the same is hereby affirmed."

It is now objected by the representatives of the State that this action of the Supreme Court of Appeals was not in accord with the mandate because it was inconsistent with the opinion of this court. In the course of that opinion in stating the facts, it was said (257 U. S., 270):

"But all of the oil of the same grade was mixed, regardless of source, and of the Pennsylvania grade only 1,239,099.55 barrels were used in West Virginia. It is admitted [fol. 314] that the tax may be levied in respect of the last item, but the question before us is whether the tax can be levied upon the whole product of the State upon which was imposed the gathering charge."

It is said that this language imposed the duty upon the Supreme Court of Appeals of so shaping its decree under our mandate as to enable the State to collect a privilege tax from the Pipe Line Company upon the number of barrels above mentioned. We can not agree with this. The statement quoted from the opinion was part of a review of the facts and a classification of the oil according to its interstate and intrastate character. Both the West Virginia courts

and the counsel for both parties agreed that this amount of oil was intrastate commerce and subject to such a privilege tax. But the language quoted was not used to indicate the form of the decree to be entered below. This Court gave no consideration to the question whether the invalidity of part of the tax rendered the whole law void because indivisible, as the Circuit Court had held it to be. That was peculiarly a state question and when we reversed the case for the reason that oil in transport which the Supreme Court of Appeals held to be intrastate and so taxable was interstate and immune, and remanded the case for further proceedings, it was entirely within the power and duty of that court to decide what under the state law would be the effect of the invalidity of part of the tax levied by the law as adjudged by this Court upon the validity of the whole tax law. The Supreme Court of Appeals evidently reached the conclusion that the Circuit Court had been right in deciding that if so much of the tax was invalid, it could not in-
[fol. 315] fer that the Legislature would have enacted the law at all. Accordingly it affirmed the decree of that court as it had full power to do.

The application for the writ of certiorari is denied and the writ of error is dismissed.

A true copy. Test:

—— ——, Clerk Supreme Court U. S.

Exhibit "Eureka Mandates Affirming Final Decree"

State of West Virginia:

At a Circuit Court for Kanawha County, Held at the Court House Thereof on the 15th Day of May, 1923

In Chancery

Eureka Pipe Line Company, a Corporation,

vs.

Walter S. Hallanan, State Tax Commissioner, &c., et al.

This day the Mandate of the Supreme Court of West Virginia, which includes the several Mandates of the Supreme Court of the United States, herein was received and

is entered of record, the same being in words and figures following:

STATE OF WEST VIRGINIA:

At a Regular Term of the Supreme Court of Appeals, continued and held at Charleston, Kanawha County, on the [fol. 316] 26th day of November, 1920, the following order was made and entered, to-wit:

Absent: Judge Williams.

EUREKA PIPE LINE COMPANY, Plaintiff Below, Appellee,

vs.

WALTER S. HALLANAN, State Tax Commissioner, etc., et al., Defendants Below, Appellants

Upon an Appeal from a Decree of the Circuit Court of Kanawha County Pronounced on the 8th Day of September, 1920

The Court, having maturely considered the motion to reverse the decree aforesaid, the record thereof and the arguments of counsel thereon, is of opinion to, for reasons stated in writing and filed with the record, and hereby doth, sustain said motion as to part of said decree and overrule said motion as to the remainder thereof. It is therefore adjudged, ordered and decreed that the decree of the Circuit Court of Kanawha County, pronounced in this cause on the 8th day of September, 1920, in so far, and in so far only, as it decrees and holds the Transportation Act, mentioned and described in the bill and proceedings in this cause, being Chapter 5 (House Bill No. 3) of the Acts of the Legislature of the State of West Virginia, extraordinary session held in 1919, to be void and perpetually inhibits, enjoins and restrains the appellants from enforcing or attempting to enforce against the appellee, in any manner or respect, the provisions of said act in so far as the same apply to intrastate commerce as defined by the written [fol. 317] opinion filed herein, be and the same hereby is set aside, reversed and annulled, and that in all other respects said decree be and the same hereby is affirmed, and that the appellee do pay to the appellants their costs about the prosecution of their appeal in this Court in this behalf

expended: all of which is ordered to be certified to the Circuit Court of Kanawha County.

The decision of points in the foregoing cause, as the same appears from the syllabus and written opinion prepared by Judge Ritz, was concurred in by Judges Poffenbarger and Miller.

At another day, to-wit, on the 12th day of January, 1921, the following order was made and entered:

* * * * * * *

EUREKA PIPE LINE COMPANY

vs.

WALTER S. HALLANAN et al.

From Kanawha County

* * * * * * *

The Court, having maturely considered the several petitions for re-argument and rehearing filed in the four foregoing causes, is of opinion to and hereby doth refuse the prayer of said petitions, and doth order that the final judgments or decrees heretofore entered in said causes at a former term of this Court be made absolute and be severally certified as *certified as* heretofore directed.

At another day, to wit, on the 1st day of February, 1921, the following order was made and entered:

[fol. 318] EUREKA PIPE LINE COMPANY, Plaintiff Below, Appellee

vs.

WALTER S. HALLANAN, State Tax Commissioner, etc., et al., Defendants Below, Appellants

Upon an Appeal from a Decree of the Circuit Court of Kanawha County Pronounced on the 8th Day of September, 1920

This day came The Eureka Pipe Line Company, by its attorneys, and informed the Court that it desired to present a petition to the Supreme Court of the United States for

a writ of error or writ of certiorari, or both, to the decree of this Court entered in this cause on the 26th day of November, 1920, and made final by the order of this Court entered on the 12th day of January, 1921, and moved the Court for an order suspending the execution of said decree and to stay the mandate herein for a period of ninety days from the 12th day of January, 1921, which motion is hereby granted; and it is ordered that, upon the said The Eureka Pipe Line Company, or some — on its behalf, executing bond, in the penalty of Ten Thousand Dollars, conditioned according to law, before the Clerk of this Court, with surety to be approved by him, within ten days, execution on said decree be, and the same hereby is, suspended for a period of ninety days from the 12th day of January, 1921, and that the mandate herein be stayed during such time.

A true copy. Attest:

Wm. B. Mathews, Clerk Supreme Court of Appeals.

[fol. 319] State of West Virginia:

At a Regular Term of the Supreme Court of Appeals, continued and held at Charleston, Kanawha County, on the 30th day of May, 1922, the following order was made and entered, to-wit:

Eureka Pipe Line Company, Plaintiff Below, Appellee,

vs.

Walter S. Hallanan, State Tax Commissioner, etc., et al., Defendants Below, Appellants

Upon an Appeal from a Decree of the Circuit Court of Kanawha County Pronounced of the 8th day of September, 1920

The mandate of the Supreme Court of the United States in the case lately pending therein, entitled The Eureka Pipe Line Company vs. Walter S. Hallanan, State Tax Commissioner, et al., having been presented to the Court on the 6th day of February, 1922, it is now ordered that the same be recorded in the Order Book of this Court.

The said mandate is in words and figures as follows:

UNITED STATES OF AMERICA, ss:

[SEAL.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of Appeals of the State of West Virginia, Greeting:

Whereas lately in the Supreme Court of Appeals of the [fol. 320] State of West Virginia, before you, or some of you, in a cause between Walter S. Hallanan, State Tax Commissioner et al., appellants, and The Eureka Pipe Line Company, appellee, No. 4196, wherein the judgment of the said Supreme Court of Appeals, entered in said cause on the 26th day of November, A. D. 1920, is in the following words, viz:

The Court having maturely considered the motion to reverse the decree aforesaid, the record thereof and the arguments of counsel thereon, is of opinion to, for reasons stated in writing and filed with the record, and hereby doth, sustain said motion as to part of said decree and overrule said motion as to the remainder thereof. It is therefore adjudged, ordered and decreed that the decree of the Circuit Court of Kanawha County, pronounced in this cause on the 8th day of September, 1920, in so far, and in so far only, as it decrees and holds the Transportation Act, mentioned and described in the bill and proceedings in this cause, being Chapter 5 (House Bill No. 3) of the Acts of the Legislature of the State of West Virginia, extraordinary session of 1919, to be void and perpetually inhibits, enjoins and restrains the appellants from enforcing or attempting to enforce against the appellee, in any manner or respect, the provision of said act in so far as the same apply to intrastate commerce as defined in the written opinion filed herein, be and the same hereby is set aside, reversed and annulled, and that in all other respects said decree be and the same hereby is affirmed, and that the appellee do pay to the appellants their costs about the prosecution of their appeal in this Court in this behalf expended; all of which is ordered to be certified to the Circuit Court of Kanawha County" as by the inspection of the transcript of the [fol. 321] record of the said Supreme Court of Appeals

which was brought into the Supreme Court of the United States by virtue of a writ of error agreeably to the act of Congress, in such case made and provided, fully and at large appears,

And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and twenty-one, the said cause came on to be heard before the Supreme Court of the United States on the said transcript of record, and was argued by counsel:

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said Supreme Court of Appeals in this cause be, and the same is hereby, reversed with costs; and that the said appellee, The Eureka Pipe Line Company, recover against the said appellants Three Thousand two hundred and twenty-three dollars and eighty-five cents for its costs herein expended and have execution therefor.

And it is further ordered that this cause be, and the same is hereby remanded to the said Supreme Court of Appeals for further proceedings not inconsistent with the opinion of this Court.

December 12, 1921.

And the same is hereby remanded to you, the said Judges of the said Supreme Court of Appeals of the State of West Virginia, in order that such execution and further proceedings may be had in the said cause, in conformity with the judgment and decree of this Court above stated, as, according to right and justice, and the Constitution and laws of [fol. 322] the United States, ought to be had therein, the said writ of error notwithstanding.

Witness the Honorable William H. Taft, Chief Justice of the United States, the fourth day of February, in the year of our Lord one thousand nine hundred and twenty-two.

Costs of appellee:

Clerk	$687 85
Printing Record	2,516 00
Attorney	20 00
	$3,223 85

Wm. R. Stansbury, Clerk of the Supreme Court of the United States.

And the Court takes time to consider of the final order to be entered in this cause.

At another day, to-wit, on the 2nd day of June, 1922, the following order was made and entered in this cause:

Absent: Judge Lively.

EUREKA PIPE LINE COMPANY, Plaintiff Below, Appellee,

vs.

WALTER S. HALLANAN, State Tax Commissioner, etc., et al., Defendants Below, Appellants

Upon an Appeal from a Decree of the Circuit Court of Kanawha County Pronounced on the 8th day of September, 1920

The Court, having maturely considered the mandate of the Supreme Court of the United States filed and entered [fol. 323] of record in this cause and the record of the decree aforesaid, is of opinion that there is no error in said decree. It is therefore adjudged, ordered and decreed that the decree of the Circuit Court of Kanawha County, pronounced in this cause on the 8th day of September, 1920, be and the same hereby is affirmed, and that the appellants do pay to the appellee thirty dollars damages and its costs about its defense in this Court in this behalf expended: all of which is ordered to be certified to the Circuit Court of Kanawha County.

A true copy. Attest:

Wm. B. Mathews, Clerk Supreme Court of Appeals.

STATE OF WEST VIRGINIA:

At a Regular Term of the Supreme Court of Appeals, continued and held at Charleston, Kanawha County, on the 12th day of May, 1923, the following order was made and entered, to-wit:

EUREKA PIPE LINE COMPANY, Plaintiff Below, Appellee,

vs.

WALTER S. HALLANAN, State Tax Commissioner, etc., et al., Defendants Below, Appellants

Upon an Appeal from a decree of the Circuit Court of Kanawha County Pronounced on the 8th Day of September, 1920

The mandates of the Supreme Court of the United States in the case lately pending therein, entitled The Eureka Pipe Line Company vs. Walter S. Hallanan, State Tax [fol. 324] Commissioner et al., having this day been presented to the Court, it is now ordered that the same be recorded in the Order Book of this Court.

The said mandates are in the words and figures following:

"SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1922

No. 569

On Petition for Writ of Certiorari to the Supreme Court of Appeals of the State of West Virginia

On Consideration of the petition for a writ of certiorari herein to the Supreme Court of Appeals of the State of West Virginia, and the argument of counsel thereupon had, it is now here ordered by this Court that the said petition be, and the same is hereby, denied, April 9, 1923.

A true copy. Teste:

Wm. R. Stansbury, Clerk of the Supreme Court of the United States. (Seal.)

and

"UNITED STATES OF AMERICA, ss:

[SEAL.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of Appeals of the State of West Virginia, Greeting:

Whereas lately in the Supreme Court of Appeals of the State of West Virginia before you, or some of you, in a cause between Walter S. Hallanan, State Tax Commis- [fol. 325] sioner etc., et al., appellants, and Eureka Pipe Line Company, appellee, No. 4196, wherein the judgment of the said Supreme Court of Appeals, entered in said cause on the 2nd day of June, A. D. 1922, was in favor of the said appellee, Eureka Pipe Line Company, and against the said appellants, as by the inspection of the transcript of the record of the said Supreme Court of Appeals which was brought into the Supreme Court of the United States by virtue of a writ of error agreeably to the act of Congress, in such case made and provided, fully and at large appears,

And Whereas, in the present term of October, in the year of our Lord one thousand nine hundred and twenty-two, the said cause came on to be heard before the Supreme Court of the United States on the said transcript of record, and on motion to dismiss or affirm which was argued by counsel;

On consideration whereof, it is now here ordered and adjudged by this Court that the writ of error in this cause be and the same is hereby, dismissed for the want of jurisdiction, April 9, 1923.

And the same is hereby remanded to you, the said Judges of the said Supreme Court of Appeals of the State of West Virginia, in order that such proceedings may be had in the said cause, in conformity with the judgment and decree of this Court above stated, as, according to right and justice, and the Constitution and laws of the United States, ought to be had therein, the said writ of error notwithstanding.

Witness, the Honorable William H. Taft, Chief Justice of the United States, the eleventh day of May, in the year

[fol. 326] of our Lord one thousand nine hundred and twenty-three.

Wm. R. Stansbury, Clerk of the Supreme Court of the United States."

All of which is ordered to be certified to the Circuit Court of Kanawha County.

A true copy. Attest:

Wm. B. Mathews, Clerk Supreme Court of Appeals.

Taxation of Costs

In the Supreme Court of Appeals of West Virginia

Eureka Pipe Line Company

vs.

Walter S. Hallanan et al.

Affirmed June 2, 1922

Appellant's costs:

Clerk	$7 15

Appellee's costs:

Clerk	4 10
Clerk of Supreme Court—Transcript	50 00
Damages, Code Chap. 135 Sec. 27	30 00
Attorney	30 00

Attest:

Wm. B. Mathews, Clerk.

A true copy from the Record. Teste:

W. L. Price, Clerk Kanawha Circuit Court. [seal.]

[fol. 327] EXHIBIT "UNITED FUEL DECREE"

STATE OF WEST VIRGINA:

At a Circuit Court for Kanawha County Held at the Court House Thereof on the 14th Day of September, 1920

In Equity. No. 5433

UNITED FUEL GAS COMPANY, a Corporation,

vs.

WALTER S. HALLANAN, as Tax Commissioner of the State of West Virginia, and E. T. England, as Attorney General of the State of West Virginia

This day this cause came on to be finally heard upon the papers formerly read, and it is now adjudged, ordered and decreed that the act of the Legislature of the State of West Virginia, passed at the Extraordinary Session of 1919, entitled, "An Act to levy a privilege tax on any person, firm or corporation engaged in the transportation of crude oil or petroleum, or the distillates thereof, or of natural gas, by means of pipe lines, authorizing the state tax commissioner to provide rules and regulations for the collection of such tax, and defining the duties of the state tax commissioner," referred to in the bill of complaint, is unconstitutional and void as against the plaintiff and the business conducted by it as set forth in its bill of complainant, for the reasons set forth in the following memorandum:

[fol. 328] Memorandum by the Court

RUMMEL, Judge:

This injunction suit has been heard and submitted with the accompanying cause of Eureka Pipe Line Company vs. Hallanan et al., and has been decided by this Court.

It appears from the pleadings and from a stipulation filed in this cause that the plaintiff is engaged in gathering natural gas in this state, the greater part of which it produces but some of which it purchases from other producers, and in transporting and distributing such gas to

consumers thereof in this and other states. The Company also handles a small quantity of gas produced and purchased by it in the State of Kentucky. The entire amount of gas so handled by the plaintiff in the year ending July 1, 1919, was 54,973,588 M. cubic feet, of which 1,243,797 M. cubic feet was produced or purchased in Kentucky and the remainder in this state.

Of the entire amount of gas so handled by the plaintiff in said year, a little more than 21,000,000 M. cubic feet was sold by the plaintiff direct to consumers thereof, 11,590,650 M. cubic feet in West Virginia, 6,971,446 M. cubic feet in Kentucky, and 3,229,358 M. cubic feet in Ohio. The remainder of 54,973,588 M. cubic feet of gas handled in said year was sold by the plaintiff to other wholesale concerns transporting and dealing in natural gas, for transportation to points outside this state. It thus appears that approximately 42,000,000 M. cubic feet of the above total was directly or indirectly sold and transported by the plaintiff out of West Virginia. It may be noted that some of these sales and deliveries to wholesale concerns are made in [fol. 329] this state and some are made outside the state.

There can be no question that the major part of the gas handled by this company in the conduct of its business is moving in interstate commerce. The attack made upon the validity of the Transportation Tax Act, Chapter 5, Acts of 1919, extraordinary session, as constituting a burden upon interstate commerce, in our judgment is as well sustained in the case as bar as in the case of Eureka Pipe Line Company vs. Hallanan et al., mentioned above. We refer to the memorandum just filed in that case for a discussion of the principle upon which our decision in both cases rests.

In our opinion a further ground of invalidity of this statute, as applied to the transportation of natural gas, is its indefiniteness in failing to specify the pressure at which the gas shall be measured for the purposes of computing the tax. It is shown that natural gas is handled at greatly varying pressures, and may be gauged or measured at either its high or low pressure; hence, it would be impossible to ascertain under this statute the exact amount of the tax upon the transportation of gas, as contemplated by the legislature, unless the statute be construed to vest

the State Tax Commissioner, or other officers enforcing the law, with authority to determine the basis of measurement and to fix some standard pressure at which all gas transported should be gauged for the purpose of computing the tax imposed by this statute. Such a construction as this, however, would in our judgment render the enactment invalid as delegating legislative power to an executive or ministerial officer.

[fol. 330] For the reasons herein mentioned, and set out in full in the memorandum filed in the case of Eureka Pipe Line Company vs. Hallanan et al., an injunction will be awarded and perpetuated in this cause as prayed in the bill.

It is therefore further adjudged, ordered and decreed that the plaintiff is entitled to the injunction prayed in its bill of complaint against the defendants, and the defendant Walter S. Hallanan, as Tax Commissioner of the State of West Virginia, is hereby perpetually inhibited and enjoined from enforcing said Act of the Legislature, or any of the terms thereof against the plaintiff herein, and the said defendant Hallanan and the defendant E. T. England, as Attorney General of the State of West Virginia, and all persons acting under the direction or control of them or either of them, are particularly inhibited and enjoined from requiring the plaintiff to make a return or report in writing to the State Tax Commissioner of the natural gas transported by the plaintiff, by means of pipe lines, in the State of West Virginia, or requiring the payment by the plaintiff of the tax prescribed by said statute upon the privilege of transporting natural gas, and from enforcing the terms of said statute imposing fines and penalties for continuing the conduct of such business without securing the license mentioned in said statute.

STATE OF WEST VIRGINIA,
County of Kanawha, ss:

I, W. L. Price, Clerk of the Circuit Court for said County and in said State, do hereby certify that the foregoing is a true copy from the record of said Court.

[fol. 331] Given under my hand and seal of said Court this the 5th day of January, 1926.

W. L. Price, Clerk Circuit Court Kanawha County, West Virginia. (Seal.)

EXHIBIT "OPINION BY MR. JUSTICE HOLMES IN GAS CASE"

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1921

No. 276

UNITED FUEL GAS COMPANY, Plaintiff in Error,

vs.

WALTER S. HALLANAN, State Tax Commissioner of the State of West Virginia; E. T. England, Attorney General of the State of West Virginia

In Error to the Supreme Court of Appeals of the State of West Virginia

December 12, 1921

Mr. JUSTICE HOLMES delivered the opinion of the Court:

This is a bill in equity that seeks to restrain the application to the plaintiff of the same statute that has been considered in Eureka Pipe Line Co. vs. Hallanan, just decided. Acts of Extraordinary Session, 1919, Ch. 5. The [fol. 332] statute taxes the transportation of natural gas as well as of oil by pipe lines and the plaintiff Gas Company makes the same objection that was made by the Oil Company in the former case to the constitutionality of the act as well as others that it will not be necessary to discuss. The two cases were heard together and were disposed of in a single opinion by the Supreme Court of Appeals. The Circuit Court of the State held the statute void, but the Supreme Court, as before, upheld it as valid with regard to intrastate business "as above defined" and defined the plaintiff's business as intrastate. The plaintiff drew in question the validity of the statute "as con-

strued and applied," Merchants National Bank of Richmond vs. Richmond, June 6, 1921, and took this writ of error. It also filed a petition for a writ of certiorari. For the reasons given in the Eureka case the writ of error will be entertained and the petition for certiorari dismissed.

The case was heard upon the pleadings and a stipulation as to facts. It appears that the plaintiff gathers and purchases natural gas, mostly in West Virginia, and distributes it through its pipes which extend to or beyond the State line in various places and also connect with the pipes of other companies that extend beyond the State. The total amount dealt with by the plaintiff in the year ending July 1, 1919, was 54,973,588 M cubic feet of which all but a little over a million M cubic feet was gathered in West Virginia. There were sold directly to consumers in West Virginia 11,590,656 M cubic feet; a little over 10,000,000 M cubic feet to consumers in other States; and the remainder was sold to four connecting companies. It is admitted that the gas sold to one of these, the Ohio Fuel [fol. 333] Supply Company, is transported in Interstate Commerce, so that may be laid on one side. Another of them is the Columbia Gas & Electric Company. Ninety-nine per cent of the gas received by it is carried out of the State and sold, yearly. A third is the Pittsburgh-West Virginia Gas Company which yearly disposes of eighty-eight per cent of the gas in the same way. The fourth is the Hope Natural Gas Company, which in like manner carries sixty-seven per cent of the gas bought from the plaintiff out of the State and sells it there.

In short the great body of the gas starts for points outside the State and goes to them. That the necessities of business require a much smaller amount destined to points within the State to be carried undistinguished in the same pipes does not affect the character of the major transportation. Neither is the case as to the gas sold to the three companies changed by the fact that the plaintiff, as owner of the gas, and the purchasers after they receive it might change their minds before the gas leaves the State and that the precise proportions between local and outside deliveries may not have been fixed, although they seem to have been. The typical and actual course of events marks the carriage of the greater part as commerce among the

States and theoretical possibilities may be left out of account. There is no break, no period of deliberation, but a steady flow ending as contemplated from the beginning beyond the State line. Ohio R. R. Commission vs. Worthington, 225 U. S., 101, 108. United States vs. Reading Co., 226 U. S., 324, 367. Western Union Telegraph Co. vs. Foster, 247 U. S., 105, 113. We have mentioned only such facts as are sufficient for our decision, and have not no-[fol. 334] ticed other objections urged against the law. What we have stated seems to us enough to condemn it as applied to this case.

Decree reversed. Petition for certiorari dismissed.

Mr. Justice Brandeis dissents.

EXHIBIT "OPINION BY MR. CHIEF JUSTICE TAFT IN GAS CASE"

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1922

Nos. 570 and 886

570

WALTER S. HALLANAN, State Tax Commissioner, et al.,

vs.

UNITED FUEL GAS COMPANY

On Petition for Writ of Certiorari to the Supreme Court of Appeals of the State of West Virginia

886

SAME

vs.

SAME

In Error to the Supreme Court of Appeals of the State of West Virginia

April 9, 1923

Mr. Chief Justice TAFT delivered the opinion of the Court:

This is a case like that of Hallanan vs. The Eureka Pipe Line Company, just decided, involving the question whether the Supreme Court of Appeals of West Virginia has complied with the mandate of this Court issued on a [fol. 335] judgment entered in the case of United Fuel Gas Co. vs. Hallanan, decided December 12, 1921, 257 U. S., 277. It is in all respects similar to that in Eureka Pipe Line Co. case and requires the same judgment.

The petition for the writ of certiorari is denied and the writ of error is dismissed.

A true copy. Test:

—— ——, Clerk Supreme Court U. S.

EXHIBIT "UNITED FUEL MANDATES AFFIRMING FINAL DECREE"

STATE OF WEST VIRGINIA:

At a Circuit Court for Kanawha County Held at the Court House Thereof on the 25th Day of May, 1923

STATE OF WEST VIRGINIA:

At a Regular Term of the Supreme Court of Appeals, continued and held at Charleston, Kanawha County, on the

26th day of November, 1920, the following order was made and entered, to wit:

Absent: Judge Williams.

United Fuel Gas Company, Plaintiff Below, Appellee,

vs.

Walter S. Hallanan, State Tax Commissioner, etc., et als., Defendants Below, Appellants

Upon an Appeal from a Decree of the Circuit Court of Kanawha County Pronounced on the 14th Day of September, 1920

The Court, having maturely considered the motion to [fol. 336] reverse the decree aforesaid, the record thereof and the arguments of counsel thereon, is of opinion to, for reasons stated in writing and filed with the record, and hereby doth, sustain said motion as to part of said decree and overrule said motion as to the remainder thereof. It is therefore adjudged, ordered and decreed that the decree of the Circuit Court of Kanawha County, pronounced in this cause on the 14th day of September, 1920, in so far, and in so far only, as it decrees and holds the Transportation Act, mentioned and described in the bill and proceedings in this cause, being Chapter 5 (House Bill No. 3) of the Acts of the Legislature of the State of West Virginia, extraordinary session held in 1919, to be void and perpetually inhibits, enjoins and restrains the appellants from enforcing or attempting to enforce against the appellee, in any manner or respect, the provisions of said act in so far as the same apply to intrastate commerce as defined by the written opinion filed herein, be and the same hereby is set aside, reversed and annulled, and that in all other respects said decree be and the same hereby is affirmed, and that the appellee do pay to the appellants their costs about the prosecution of their appeal in this Court in this behalf expended: all of which is ordered to be certified to the Circuit Court of Kanawha County.

The decision of points in the foregoing cause, as the same appears from the syllabus and written opinion prepared by Judge Ritz, was concurred in by Judges Poffenbarger and Miller.

At another day, to wit, on the 12th day of January, 1921, [fol. 337] the following order was made and entered:

* * * * * * *

UNITED FUEL GAS COMPANY

vs.

WALTER S. HALLANAN et al.

From Kanawha County

* * * * * * *

The Court, having maturely considered the several petitions for re-argument and rehearing filed in the four foregoing causes, is of opinion to and hereby doth refuse the prayer of said petitions, and doth order that the final judgments or decrees heretofore entered in said cause at a former term of this Court be made absolute and be severally certified as heretofore directed.

At another day, to wit, on the 1st day of February, 1921, the following order was made and entered:

UNITED FUEL GAS COMPANY, Plaintiff Below, Appellee,

vs.

WALTER S. HALLANAN, State Tax Commissioner, etc., et al., Defendants Below, Appellants

Upon an Appeal from a Decree of the Circuit Court of Kanawha County Pronounced on the 14th Day of September, 1920

This day came United Fuel Gas Company, by its attorneys and informed the Court that it desired to present a petition to the Supreme Court of the United States for a writ of error or writ of certiorari, or both, to the decree of this Court entered in this cause on the 26th day of November, 1920, and made final by the order of this Court entered on the 12th day of January, 1921, and moved the Court for an order suspending the execution of this de- [fol. 338] cree and to stay the mandate herein for a period

of ninety days from the 12th day of January, 1921, which motion is hereby granted; and it is ordered that, upon the said United Fuel Gas Company, or some one on its behalf, executing bond, in the penalty of Ten Thousand Dollars, conditioned according to law, before the Clerk of this Court, with surety according to law, within ten days, execution on said decree be, and the same hereby is, suspended for a period of ninety days from the 12th day of January, 1921, and that the mandate herein be stayed during such time.

A true copy. Attest:

Wm. B. Mathews, Clerk Supreme Court of Appeals.

STATE OF WEST VIRGINIA:

At a Regular Term of the Supreme Court of Appeals, continued and held at Charleston, Kanawha County, on the 30th day of May, 1922, the following order was made and entered, to wit:

Absent: Judge Lively.

UNITED FUEL GAS COMPANY, Plaintiff Below, Appellee,

vs.

WALTER S. HALLANAN, State Tax Commissioner, etc., et al., Defendants Below, Appellants

Upon an Appeal from a Decree of the Circuit Court of Kanawha County Pronounced on the 14th Day of September, 1920

The mandate of the Supreme Court of the United States in the case lately pending therein, entitled United Fuel Gas Company vs. Walter S. Hallanan, State Tax Commissioner et al., having been presented to the Court on the [fol. 339] 6th day of February, 1922, it is now ordered that the same be recorded in the Order Book of this Court.

The said mandate is in words and figures as follows:

The President of the United States of America to the Honorable the Judges of the Supreme Court of Appeals of the State of West Virginia, Greeting:

[SEAL.]

Whereas, lately in the Supreme Court of Appeals of the State of West Virginia, before you, or some of you, in a cause between Walter S. Hallanan, State Tax Commissioner, etc., et al., appellants, and United Fuel Gas Company, appellee, No. 4201, wherein, the judgment of the said Supreme Court of Appeals, entered in said cause on the 26th day of November, A. D. 1920, is in the following words, viz:

"The Court, having maturely considered the motion to reverse the decree aforesaid, the record thereof and the arguments of counsel thereon, is of opinion to, and for reasons stated in writing and filed with the record, and hereby doth, sustain said motion as to part of said decree and overrule said motion as to the remainder thereof. It is therefore adjudged, ordered and decreed that the decree of the Circuit Court of Kanawha County, pronounced in this cause on the 14th day of September, 1920, in so far, and in so far only, as it decrees and holds the Transportation Act, mentioned and described in the bill and proceedings in this cause, being chapter 5 (House Bill No. 3) of the Acts of the Legislature of the State of West Virginia, extraordinary session held in 1919, to be void and perpetually in-[fol. 340] hibits, enjoins and restrains the appellants from enforcing or attempting to enforce against the appellee, in any manner or respect, the provisions of said act in so far as the same apply to intrastate commerce as defined by the written opinion filed herein, be, and the same hereby is set aside, reversed and annulled, and that in all other respects said decree be and the same hereby is affirmed, and that the appellee do pay to the appellants their costs about the prosecution of their appeal in this Court in this behalf expended: all of which is ordered to be certified to the Circuit Court of Kanawha County."

as by the inspection of the transcript of the record of the said Supreme Court of Appeals, which was brought into the Supreme Court of the United States by virtue of a writ of error agreeably to the act of Congress, in such case made and provided, fully and at large appears,

And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and twenty-one, the said cause came on to be heard before the Supreme Court of the United States on the said transcript of record, and was argued by counsel;

On consideration whereof, it is now here ordered and adjusted by this Court that the judgment of the said Supreme Court of Appeals in this cause be, and the same is hereby, reversed with costs; and that the said appellee, United Fuel Gas Company, recover against the said appellants Four Hundred and Forty-nine dollars and seventy-five cents for its costs herein expended and have execution therefor.

[fol. 341] And it is further ordered that this cause be, and the same is hereby, remanded to the said Supreme Court of Appeals for further proceedings not inconsistent with the opinion of this Court. December 12, 1921.

And the same is hereby remanded to you, the said Judges of the said Supreme Court of Appeals of the State of West Virginia, in order that such execution and further proceedings may be had in the said cause, in conformity with the judgment and decree of this Court above stated, as, according to right and justice, and the Constitution and laws of the United States, ought to be had therein, the said writ of error notwithstanding.

Witness the Honorable William H. Taft, Chief Justice of the United States, the fourth day of February, in the year of our Lord one thousand nine hundred and twenty-two.

Costs of appellee:

Clerk	$140 15
Printing Record	289 60
Attorney	20 00
	$449 75

Wm. R. Stansbury, Clerk of the Supreme Court of the United States.

And the Court takes time to consider of the final order to be entered in this cause.

At another day, to wit, on the 2nd day of June, 1922, the following order was made and entered in this cause:

Absent: Judge Lively.

[fol. 342] UNITED FUEL GAS COMPANY, Plaintiff Below, Appellee,

vs.

WALTER S. HALLANAN, State Tax Commissioner, etc., et al., Defendants Below, Appellants.

Upon an Appeal from a Decree of the Circuit Court of Kanawha County Pronounced on the 14th day of September, 1920

The Court, having maturely considered the mandate of the Supreme Court of the United States filed and entered of record in this cause and the record of the decree aforesaid, is of opinion that there is no error in said decree. It is therefore adjudged, ordered and decreed that the decree of the Circuit Court of Kanawha County, pronounced in this cause on the 14th day of September, 1920, be and the same hereby is affirmed, and that the appellants do pay to the appellee thirty dollars' damages and its costs about its defense in this Court in this behalf expended; all of which is ordered to be certified to the Circuit Court of Kanawha County.

A true copy. Attest:

Wm. B. Mathews, Clerk Supreme Court of Appeals.

STATE OF WEST VIRGINIA:

At a Regular Term of the Supreme Court of Appeals, continued and held at Charleston, Kanawha County, on the 12th day of May, 1923, the following order was made and entered, to wit:

UNITED FUEL GAS COMPANY, Plaintiff Below, Appellee,

vs.

WALTER S. HALLANAN, State Tax Commissioner etc., et al., Defendants Below, Appellants.

[fol. 343] Upon an Appeal from a Decree of the Circuit Court of Kanawha County Pronounced on the 14th Day of September, 1920

Upon an Appeal from a Decree of the Circuit Court of Kanawha County Pronounced on the 14th Day of September, 1920

The mandates of the Supreme Court of the United States in the case lately pending therein, entitled United Fuel Gas Company vs. Walter S. Hallanan, State Tax Commissioner et al., having this day been presented to the Court, it is now ordered that the same be recorded in the Order book of this Court.

The said mandates are in the words and figures following:

Supreme Court of the United States, October Term, 1922

No. 570

WALTER S. HALLANAN, State Tax Commissioner, and E. T. England, Attorney General of the State of West Virginia, Petitioners,

vs.

UNITED FUEL GAS COMPANY

On Petition for Writ of Certiorari to the Supreme Court of Appeals of the State of West Virginia

On consideration of the petition for a writ of certiorari herein to the Supreme Court of Appeals of the State of West Virginia, and of the argument of counsel thereupon had, it is now here ordered by this Court that the said petition be, and the same is hereby, denied.

April 9, 1923.

[fol. 344] A true copy. Test:

Wm. R. Stansbury, Clerk of the Supreme Court of the United States. (Seal.)

And

THE UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Judges of the Supreme Court of Appeals of the State of West Virginia, Greeting:

[SEAL.]

Whereas, lately in the Supreme Court of Appeals of the State of West Virginia, before you, or some of you, in a cause between Walter S. Hallanan, State Tax Commissioner, etc., et al., appellants, and United Fuel Gas Company, appellee, No. 4201, wherein the judgment of said Supreme Court of Appeals, entered in said cause on the 2nd day of June, A. D. 1922, was in favor of the said appellee, United Fuel Gas Company, and against the said appellants, as by the inspection of the transcript of the record of the said Supreme Court of Appeals which was brought into the Supreme Court of the United States by virtue of a writ of error agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and twenty-two, the said cause came on to be heard before the Supreme Court of the United States on the said transcript of record, and [fol. 345] on motion to dismiss or affirm which was argued by counsel:

On consideration whereof, it is now here ordered and adjudged by this Court that the writ of error in this cause be, and the same is hereby, dismissed for the want of jurisdiction. April 9, 1923.

And the same is hereby remanded to you, the said Judges of the said Supreme Court of Appeals of the State of West Virginia, in order that such proceedings may be had in the said cause, in conformity with the judgment and decree of this Court above stated, as according to right and justice, and the Constitution and laws of the United States,

ought to be had therein, the said writ of error notwithstanding.

Witness the Honorable William H. Taft, Chief Justice of the United States, the eleventh day of May, in the year of our Lord one thousand nine hundred and twenty-three.

Wm. R. Stansbury, Clerk of the Supreme Court of the United States.

All of which is ordered to be certified to the Circuit Court of Kanawha County.

A true copy. Attest:

Wm. B. Mathews, Clerk Supreme Court of Appeals.

[fol. 346] Taxation of Costs

In the Supreme Court of Appeals of West Virginia

Walter S. Hallanan et al.

vs.

United Fuel Gas Company

Affirmed June 2, 1923

Appellant's costs:

Clerk Paid by United Fuel Gas Co.	$7 40
Printing Record Paid by U. F. Gas Co.	89 25
Sheriff S. B. Jarrett, Paid by U. F. Gas Co. serving process	75
Attorneys Paid by U. F. Gas Co.	30 00

Appellee's costs:

Clerk	5 87
Damages, Code Chap. 135 Sec. 27	30 00
Attorney	30 00

Attest:

Wm. B. Mathews, Clerk.

A true copy from the record. Teste:

W. L. Price, Clerk Kanawha Circuit Court. (Seal.)

[fol. 347] EXHIBIT "ACT OF 1921"

An Act of the Legislature of West Virginia

(Being Senate Bill No. 265, by Mr. Lewis)

[Passed April 29, 1921. In effect July 1st, 1921. Approved by the Governor May 3, 1921]

An act providing for the raising of additional public revenues by a tax upon the privilege of engaging in certain occupations, and upon the privilege of making sales of property; and by a similar tax upon the gross earnings of public service companies and other companies and persons, not derived from the sales of property; and providing, also, for the repeal of certain statutes.

Be it enacted by the Legislature of West Virginia:

Definitions

Section 1. That when used in this act the term "person" includes co-partnerships, associations and corporations, as well as individuals, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context. The terms "tax commissioner" and "state tax commissioner" mean the state tax commissioner of the state of West Virginia. The term "tax year" or "taxable year" mean either the calendar year, or the fiscal year, in accordance with the method of accounting regularly employed and in which the books of the tax payer are kept. The term "sale" or "sales" include the exchange of properties as well as the sale thereof for money,—every closed transaction constituting a sale; but a gift for religious, charitable or educational purposes, or a conveyance or transfer from parent to child, or from husband to wife, or wife to husband, without consideration, or upon a nominal consideration, shall not be deemed a sale. The word "tax-payer" means any individual, corporation, or association liable for any tax hereunder. The words "gross income" applied to wholesalers and jobbers under clause (b) of section two of this act mean the gross difference between the cost and selling price of the articles or merchandise sold, without any deduction for cost of

[fol. 348] carrying on the business, or without any deductions for losses or operating or other expenses. Said words when used with reference to public service and other corporations mentioned in and taxable under clause (c) of section two of this act include all income from discounts, interest, exchange and sales of services of every character, rentals, dividends and all other receipts derived from the operation of the business of the company without any deductions for losses of operating or other expenses. Said words when used in reference to individuals and corporations taxable under clause (d) of section two of this act shall include all of the income and receipts derived from the business or profession of the tax-payer without any deductions for losses or for the expenses of carrying on or conducting the business or practicing the profession.

Sec. 2. (a) That from and after June thirtieth, A. D., nineteen hundred and twenty-one, there is hereby levied and shall be collected an annual privilege tax upon every person engaging or continuing, within this state, in the business of mining and producing for sale, or for profit, any coal, oil, natural gas, limestone, sand, or other mineral product the amount of each tax to be determined and ascertained by the value of the articles produced as shown by the gross proceeds derived from the sale thereof by the producer, (except as hereinafter provided), which tax shall be equal in amount to two-fifths of one per centum of the value of the articles as so ascertained; and from and after said date there is hereby levied and shall be collected an annual privilege tax upon every person engaging or continuing within this state, in the business of manufacturing, compounding, or preparing for sale, any article or articles, substance or substances, commodity or commodities, the amount of such tax to be determined and ascertained by the value of the articles manufactured, compounded or prepared for sale, as shown by the gross proceeds derived from the sale thereof by the manufacturer or person compounding or preparing the same, (except as hereinafter provided), which tax shall be equal in amount to one-fifth of one per centum of the value of the articles as so ascertained.

If any person liable for any tax under paragraph (a) shall ship or transport his products, or any part thereof, out of the state, and before making sale of such products, shall further manufacture, transform, or consume the same,

the value of the products or articles in the condition or form in which they existed when transported out of the state, shall be the basis for the assessment of the tax imposed in said paragraph; and the tax commissioner shall [fol. 349] prescribe equitable and uniform rules for ascertaining such value.

In determining value, however, in cases of sales from one to another of affiliated corporations, or under other circumstances where the relation between the buyer and seller is such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the tax commissioner shall prescribe uniform and equitable rules for determining the value upon which such privilege tax shall be levied, corresponding, as nearly as possible, to the gross proceeds from the sale of similar products of like quantity by the other tax-payers where no common interest exists between buyer and seller, but otherwise under similar circumstances and conditions.

(b) Upon the privilege of selling any tangible property whatsoever, real or personal, (not including, however, bonds or other evidence of indebtedness, or stocks), there is likewise hereby levied, and shall be collected, a like tax of one-fifth of one per centum of the gross proceeds of such sale: Provided, however, that in the case of sales of merchandise by wholesalers or jobbers, as distinguished from sales at retail to the consumer or users of the article sold, the tax shall be equal to one-third of one per centum of the excess of the gross proceeds from the sales over and above the purchase price paid by such wholesaler or jobber, instead of one-fifth of one per centum of the gross proceeds of such sales; and there shall be excepted from the tax provided by this paragraph (b) the proceeds of any sale of articles, substances, or commodities, by the person, firm or corporation manufacturing, compounding or preparing the same for sale, when such proceeds are included in determining the amount of the tax imposed in paragraph (a) of this section; and there is excepted also from the tax in paragraph (b) of this section sales of articles, substances or commodities for continuous transportation and delivery outside this state, in commerce between this state and other

states of the United States, or between this state and foreign countries, and sales of articles, substances or commodities by the importer thereof from any foreign country or from any other state of the United States, when sold in the original package before being commingled with the mass of property in the state.

(c) There is likewise levied, and shall be collected, upon the privilege of engaging in their respective businesses, a tax of one-fifth of one per centum upon the gross income of banks, banking institutions, trust companies, railroad, street railroad (whether steam or electric), telephone, tele-[fol. 350] graph, oil pipe line, water, navigation, and express companies; excepting, however, from such gross income so to be taxed, so much thereof as is derived from business conducted in commerce between this state and other states of the United States, or between this state and foreign countries.

(d) There is likewise levied and shall be collected upon the privilege of engaging in any gainful business or profession within this state, not included in the preceding paragraphs (a), (b) and (c), an annual tax equal to one-fifth of one per centum upon the gross income derived from such businesses or professions, of any individual or corporation engaging or continuing therein.

There shall be included in the gross income of any individual taxable under paragraph (d) that part of the gross income not taxed under clauses (a), (b) or (c) of this section, of any copartnership or association of which he is a member, represented by his interest in, or share of, the copartnership or association's business.

In computing the amount of the tax levied hereunder, however, for any year, there shall be deducted in addition to the other exemptions herein provided for, from the gross proceeds of sales, or gross value of articles produced, manufactured, compounded and prepared, mentioned in paragraph (a) and from the gross proceeds of sales or gross income mentioned in paragraph (b), and from the gross income mentioned in paragraphs (c) and (d), respectively, of this section, of each tax-payer, an exemption of ten thousand dollars of the amount of such gross proceeds of sales or value of articles, or gross income as the case may

be. Each person who shall engage in any business or profession, upon which a tax is imposed under the provisions of this act, for any fraction part of a tax year, shall be entitled to an exemption of that part of the sum of ten thousand dollars which bears the same proportion to the total sum that the period of time during which he is engaged in such business or occupation bears to a whole year.

Sec. 3. If any person shall, after the thirtieth day of June, A. D., nineteen hundred and twenty-one, engage or continue in any of the businesses or professions for which a privilege tax is imposed by this act he shall be deemed to have applied for and to have duly obtained from the state of West Virginia a license to engage in and to conduct such business or profession for the year ending on the thirtieth day of June next following the date on which he shall so engage therein, upon the condition that he shall pay the tax accruing to the state of West Virginia under the pro- [fol. 351] visions of this act; and he shall hereby be duly licensed to engage in and conduct such business or engage in such profession.

Sec. 4. There are, however, exempted from the provisions of this act; (a) insurance companies which pay to the state of West Virginia a tax of two per centum upon premiums levied under the provisions of chapter seventy-seven of the acts of the legislature, A. D., one thousand, nine hundred and seven; (b) mutual savings banks not having a capital stock represented by shares, and which are operated exclusively for the benefit of their depositors; labor, agricultural and horticultural societies and organizations not operated for profit; cemetery companies which are organized and operated exclusively for the benefit of their members; fraternal benefit societies, orders or associations operating under the lodge system, or for the exclusive benefit of the members of the fraternity itself operating under a lodge system, and providing for the payment of death, sick, accident or other benefits to the members of such societies, orders or associations, and to their dependents; domestic loan and building associations operated exclusively for the benefit of their members; corporations, associations or societies organized and operated exclusively for religious, charitable, scientific or educational purposes; business

leagues, chambers of commerce, boards of trade, civic leagues, or organizations operated exclusively for the benefit of the community and for the promotion of social welfare; none of which companies, organizations, corpor-tions or societies named in this section are organized for profit and no part of the net income of which inures to the benefit of any private stockholder or individual.

Sec. 5. In case of a sale of tangible property in which the payment of a part of the consideration is deferred beyond the current tax year, the seller may elect to pay the taxes thereon upon the entire consideration in the year in which the sale is made, or he may treat the amount of the consideration paid in each year as the proceeds of a sale made in that particular year, or as a part of the gross value of that year, in which event the privilege tax shall be based upon, or the sales tax payable upon, the amount of the consideration paid in the tax year in which the payment is made. When goods are sold at a delivered price and estimated or actual freight charges have been added to the price from the point of shipment to the point of delivery the actual charges so added may be deducted from the gross invoice price to ascertain the value upon which to compute the tax. Trade discounts which are regularly allowed under similar conditions of sale may be allowed for excise tax purposes if such discounts are allowed and de- [fol. 352] ducted upon the face of the invoice by the seller. Likewise cash discounts may be allowed for excise tax purposes if allowed and deducted on the face of the invoices by the seller.

Sec. 6. The taxes levied hereunder shall be payable in quarterly installments on or before the expiration of thirty days from the end of the quarter in which the tax accrues. The tax-payer shall, within thirty days from the expiration of each quarter, make out an estimate of the tax for which he is liable for such quarter, verify the same by oath, and mail the same together with a remittance for the amount of the tax, to the office of the state tax commissioner, at Charleston, West Virginia. In estimating the amount of the tax due for each quarter the tax-payer may deduct one-fourth of the total exemption allowed for the year. Provided, however, that when the total tax for which any

person is liable under this act does not exceed the sum of one hundred dollars in any year, the total amount of said tax shall be payable at the end of the month next following the close of the tax year.

On or before thirty days from the end of any tax year, each person liable for the payment of a tax under clause (a) of section two of this act shall make a return showing the gross proceeds of sales, or gross value of articles produced during the preceding tax year; and if liable for a tax under clause (b) of section two of this act, he shall make a return showing the gross proceeds of sales for such tax year, or gross income, as the case may be; and if liable for a tax under clause (c) or (d) of section two of this act, he shall make a return showing the gross income during such tax year; and compute the amount of the tax chargeable against him in accordance with the provisions of this act, and deduct the amount of quarterly payments, if any made upon the tax for the preceding tax year, and transmit with his report the residue of the tax chargeable against him, to the office of the state tax commissioner; such return shall be verified by the oath of the taxpayer, if made by an individual, or by the oath of the president, vice-president, secretary or treasurer of a corporation, if made on behalf of a corporation. If for any reason it is not practicable for the individual tax-payer to make the oath, the same may be made by any duly authorized agent.

All taxes shall be remitted to the state tax commissioner who shall issue his receipts therefor to the tax-payers, and shall pay the moneys into the state treasury to be kept and accounted for as provided by law.

The tax commissioner may, for good cause shown, extend the time for making a return on the application of any tax-[fol. 353] payer and grant such reasonable additional time within which to make the same as may, by him, be deemed advisable.

Sec. 7. If the tax-payer shall make any error in computing the tax assessable against him, or if the state tax commissioner shall be dissatisfied with the tax as computed and paid, the tax commissioner shall correct such error or re-assess the proper amount of taxes, and notify the tax-payer of his action by mailing to him promptly a copy of the corrected assessment, and any additional tax for which

such tax-payer may be liable shall be paid within ten days after the receipt of such statement.

The tax-payer may recover any tax improperly collected, in the manner prescribed in section nine of this act.

Sec. 8. If any person liable for the payment of a tax hereunder shall fail or refuse to make a return to the tax commissioner as herein provided, and pay the tax, the tax commissioner shall proceed to ascertain the facts and information necessary to enable him to assess the proper tax against such person, and in so doing he shall be entitled to call upon and require the assessor of the county in which the tax-payer resides, as well as the prosecuting attorney of the county, to make investigation, examine the books, records and papers of the tax-payer, and to take evidence under oath; all of which shall be transmitted to the state tax commissioner.

From the information so obtained the state tax commissioner shall assess the tax chargeable against the party, and the tax so assessed shall at once become due and payable, and the party charged with the same shall not be permitted to dispute or contest the amount of such tax until he shall first file with the tax commissioner the return required of him under secthion six of this act.

Upon receipt of such return the tax commissioner may correct the assessment if erroneous or improper, and within ten days after the same shall have been corrected, or after the tax commissioner shall have refused to correct the same, the party liable for the tax shall pay the tax so assessed, but if improperly assessed the taxpayer may recover the same in the manner prescribed in the following section.

Sec. 9. A tax assessed under this act shall constitute a debt due the state and may be collected by action of assumpsit or other appropriate judicial proceeding. If not paid when due it shall constitute a lien upon all the property of the tax-payer, and the same shall be collected, together with a penalty of ten per centum of the amount of the tax and the costs of collection.

[fol. 354] No injunction shall be awarded by any court or judge to restrain the collection of any tax imposed by this act, except upon the ground that the assessment thereof

was in violation of the constitution of the United States or the constitution of the state of West Virginia, or that the same was fraudulently assessed.

Any person improperly charged with any tax and required to pay the same, may recover the amount paid, together with interest, in any proper action or suit against the state tax commissioner and the circuit court of the county in which the tax-payer resides or is located shall have original jurisdiction of any action to recover any tax improperly collected. It shall not be necessary for the tax-payer to protest against the payment of the tax or to make any demand to have the same refunded in order to maintain such suit. In any suit to recover taxes paid or to collect taxes the court shall adjudge costs to such extent and in such manner as may be deemed equitable.

Sec. 10. The assessment of taxes herein made and the returns required thereof shall be for the fiscal year ending on the thirtieth day of June; provided, however, that if the tax-payer in transacting his business keeps his books reflecting the same on the basis of the calendar year, and makes the calendar year his annual accounting period, the taxes chargeable against him shall be computed on the basis of the calendar year, and the annual returns required of such tax-payer shall be for the calendar year. If the tax-payer's annual accounting period is other than the fiscal year or the calendar year, he may, with the assent of the tax commissioner, make his annual returns and pay taxes for the year covering his accounting period as shown by the method of keeping the books of his business.

Sec. 11. The tax imposed by this act shall be in addition to all other licenses and taxes levied by law as a condition precedent to engaging in any business, occupation, trade or profession, or doing any act taxable hereunder, except as in this act otherwise specifically provided.

Sec. 12. It shall be unlawful for any person to refuse to make the return provided to be made in section six of this act; or to make any false or fraudulent return or false statement in any return, with intent to defraud the state or to evade the payment of the tax, or any part thereof imposed

by this act; or for any person to aid or abet another in any attempt to evade the payment of the tax, or any part thereof, imposed by this act; or for the president, vice president, secretary or treasurer to make or permit to be made for any corporation any false return, or any false statement in any return required in this act, with the intent to evade [fol. 355] the payment of any tax hereunder. And any person violating any of the provisions of this section shall be guilty of a misdemeanor and on conviction thereof shall be fined not more than five thousand dollars, or imprisoned not exceeding one year in the county jail, or punished by both fine and imprisonment, in the discretion of the court, within the limitations aforesaid. In addition to the foregoing penalties, any person who shall knowingly swear to or verify any false or fraudulent return or any return containing any false or fraudulent statement, with the intent aforesaid, shall be guilty of the offense of false swearing, and, on conviction therefor, shall be punished in the manner provided by law. Any corporation for which a false return, or a return containing a false statement as aforesaid shall be made, shall be guilty of a misdemeanor and may be punished by a fine of not more than five thousand dollars. The circuit and criminal courts of the county in which the offender resides, or if a corporation in which it carries on business, shall have jurisdiction to enforce this section.

Sec. 13. If the tax commissioner shall have any reason to believe that any person liable for the payment of a tax has made a false or fraudulent return and is thereby evading the payment of a tax, or any part thereof, he may cause an investigation to be made by the attorney general through the prosecuting attorney of the county in which the taxpayer resides or is located. In order to conduct such investigation the prosecuting attorney may notify the taxpayer to appear before the circuit court of the county, which court shall require the production of all books, papers, and documents necessary to ascertain the facts in the premises, and may examine the delinquent and other witnesses under oath, and no witness shall be excused from testifying concerning any pertinent matter on the ground that his testimony might incriminate, or tend to incriminate him, or

render him liable to punishment or to any penalty. But no person shall thereafter be prosecuted and punished or suffer any penalty in any court in the state for any offense which he shall have been required to disclose, or about which he shall have been required to testify in such proceedings.

Sec. 14. The state tax commissioner shall prescribe forms to be used in making returns and in the assessment and payment of the taxes imposed by this act, but all such forms shall be as simple as practicable, and the tax-payer shall not be required to disclose any matter not germane to the ascertainment of the amount of the tax with which he is properly chargeable.

The tax commissioner may prescribe reasonable rules of procedure in conformity with this act for the ascertainment, assessment and collection of the taxes imposed hereunder. [fol. 356] Sec. 15. The administration of this act is vested in and shall be exercised by the state tax commissioner for the state of West Virginia, but the enforcement of any of the provisions of this act in any of the courts of the state shall be under the exclusive jurisdiction of the attorney general of the state who may require the assistance of and act through the prosecuting attorney of any county, and he may, with the assent of the board of public works of the state, employ special counsel in any county to aid the prosecuting attorney, the compensation of whom shall be fixed by and paid only upon, the order of the state board of public works.

Neither the attorney general nor any prosecuting attorney of any county shall receive any fees or compensation for services rendered in enforcing this act in addition to the salary paid by the state of West Virginia, or by the county, to such officer.

Sec. 15-a. The board of public works shall not, for the year one thousand nine hundred and twenty-one and for the year one thousand nine hundred and twenty-two, lay any state levy or levies exceeding in the aggregate the sum of ten cents, as now authorized by law, except that such board shall lay such levies as may be required under the Virginia debt act and under the good roads bond act.

Sec. 16. Sections five to seventeen, both inclusive, of chapter three of the acts of the legislature of West Virginia,

of nineteen hundred and fifteen, second extra session, and sections one to five, both inclusive, of chapter six of the acts of the second extraordinary session of the legislature of West Virginia of one thousand nine hundred and seventeen, and chapter seven of the acts of the legislature of West Virginia of nineteen hundred and nineteen, extra session, and sections one to nine both inclusive, of chapter five of the acts of the legislature of West Virginia, extraordinary session of one thousand nine hundred and nineteen, and all other acts and parts of acts inconsistent with the provision of this act, are hereby repealed. Provided, however, that said sections shall remain in force for the assessment and collection of all taxes which have accrued thereunder up to and including June thirtieth, one thousand nine hundred and twenty-one and for the imposition and collection of all penalties which have accrued and may accrue in relation to any such taxes up to and including June thirtieth, one thousand nine hundred and twenty-one.

(Here follow State tax returns, marked side folio pages 357, 358, 359 & 360, 361, 362, 363, 364, 365, & 366, 367, 368, 369, 370, 371 & 372, 373, 374, 375, 376, 377 & 378, 379, 380, 381, 382, 383 & 384, 385, and 386.)

[fol. 387] TABULATED LIST OF EXHIBITS WITH BILL OF COMPLAINT AND STIPULATION

A. "Stipulation U. F. G. Co."
1. "Copy of Tax Act and Rules and Regulations."
2. "Quarterly Return."
3. "Annual Return."
4. "Lease."
5. "Form of Return."
6. "Tabulation No. 1 and No. 2."
7. "Map 1902."
8. "Map 1908."
9. "Map 1918."
10. "Map 1925."
11. "Form of Gas Purchase Contract."

L-295
Form 101—B-P Tax. This return is to be forwarded to the STATE TAX COMMISSIONER, BOX 1216, CHARLESTON, W. VA. 6-11-25-85M

STATE OF WEST VIRGINIA—ANNUAL RETURN—BUSINESS-PROFESSION TAX

(1) For Year Ended _____ (2) or Part Year From July 1st To Dec. 31 1921

(3) Business Carried on is Production and Distribution of Natural Gas

(4) Books of Account are Kept at (Post Office) Pittsburgh Pa. (P. O. Box 1756)

(5) Principal Place of Business or Chief Works in W. Va. Clarksburg, W. Va.

(6) Name and Address of Outside Expert (if employed) Preparing Return: _____

THIS RETURN WITH CHECK TO COVER TAXES DUE MUST BE RECEIVED WITHIN 30 DAYS FROM END OF PERIOD COVERED BY THE RETURN.

FOR USE OF BUREAU ONLY	
Date Received	
Serial No.	
From	To
Audited by	
Amount Remitted $	
Total $	
Am't and Date Assessed	

MADE BY — INSERT NAME AND ADDRESS AND INDICATE BY X THE CLASS TO WHICH YOU BELONG

(COPY)

Hope Natural Gas Company,
Box 1756,
Pittsburgh, Pa.

Individual	
Corporation	X
Partnership	
Association	
Profession	

(7) When business begun? 1898

(8) Did you sell or otherwise dispose of your property, or quit business, during period covered by this return? _____

(9) If so, when? _____

(10) If business sold, to whom? _____

(11) If a corporation, when incorporated? Sept 17 1898, (12) Under the laws of what state? West Va.; (13) When business begun? 1898

(14) If a foreign corporation, when admitted to do business in West Virginia? _____ (15) Did the corporation dissolve or quit business during the period covered by this return? No (16) If so, when? — (17) Did the corporation change its name during the period covered by this return? No (18) If so, old name — (19) New name. _____

(20) The Year Ending Dec. 31st Is Designated as the Close of Taxpayer's Year for Tax Report Purposes

COMPUTATION OF TAXES—BUSINESS CONDUCTED IN WEST VIRGINIA

1. Item	2. Gross Amount			3. Exemptions Claimed			4. Taxable Amount			5. Rate	6. Amount of Tax		
	Dollars		Cts.	Dollars		Cts.	Dollars		Cts.		Dollars		Cts.
A1. Gross value of Minerals produced in West Virginia	$ 3	130 909	07	$ 5	000	00	$ 3	125 909	07	2/5 of 1%	$ 12	503	63
A2. Gross value of Manufactures produced in West Virginia		175 637	26		18 632	80		157 004	46	1/5 of 1%		314	01
B1. Gross Sales of Tangible Property in West Virginia (except by Wholesalers)		864 373	10		5	000	00		859 373	10	1/5 of 1%	1	718 75
B2. Gross Profits of Wholesalers and Jobbers	1	305 361	76	1	242	941	98		62 419	78	1/3 of 1%		208 07
C. Gross Income of Banks, Railroads, etc.											1/5 of 1%		
D. Gross Income of Professions and all other businesses		34 576	13		5	000	00		29 576	13	1/5 of 1%		59 15
E. Total Amount of Taxes due	5	510 857	32	1	276	574	78	4	234 282	54		$ 14	803 61

*Real estate sales included in amount shown under item B1. $ _____

F. PAYMENTS ON ESTIMATED RETURNS AS UNDER:

1. 1st Quarter	$		
2. 2nd Quarter			
3. 3rd Quarter	6,108	48	
4. Tentative Payment on Final Return. (Taxpayers who have been granted an extension of time within which to file final return shall use line 4 to show tentative payment required pending the filing of final return.)	7,000	00	
5. Check Enclosed	1,695	13	
6. Total to Balance E.			$ 14.803 61

OATH

R. D. Beardsley

I, _____, do solemnly swear that the statements and items (both as to designations and amounts), entered in the foregoing return and in the supplementary statement and in any additional list or lists attached to or accompanying this return, are, to the best of my knowledge and belief, true and correct in each and every particular; that the figures thereon reported were taken from the original books, papers and records of the taxpayer making return; and that the person signing this return is thoroughly familiar with the business reported in the return and with the original books, papers and records from which the return was prepared.

Sworn to and subscribed before me this 30th day of March, 192 2

HOPE NATURAL GAS COMPANY
(Name of Taxpayer)

(Seal) G. A. Kinley
Notary Public.

[Seal of Officer Taking Affidavit.]

R. D. Beardsley, Treasurer.
(Official title, if made on behalf of a corporation: president, vice-president, secretary or treasurer, as the case may be.)

My commission expires on the 25th day of March, 192 5

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THIS RETURN IS NOT COMPLETE UNTIL THE SUPPLEMENTARY SCHEDULE OR SCHEDULES CORRESPONDING WITH THE ITEM OR ITEMS ABOVE REPORTED BY THE TAXPAYER ARE FILLED IN

ALL SCHEDULES OF THIS RETURN COVER THE PERIOD FROM July 1. TO Dec. 31, 1921

SCHEDULE A1. (To be used by Miners and Producers of Coal, Oil, Gas and other Minerals).

This schedule is to be prepared after COMPUTATION OF TAXES, page 1, has been completed by the making of the proper entries in columns 2 to 6 thereof.

	(1) Total Output in Production Units	(2) Average Price per Unit	(3) AMOUNT Dollars	Cts.
(1) Taxable Sales Proceeds as per column 4, page 1	xxxxxxxxxxxxxxx xxxx	xxxxxxxxxx	$ 3,125,909	07
Add exemptions claimed as per column 3, page 1:				
(2) Specific exemption at rate of $10,000 annually	xxxxxxxxxxxxxxx xxxx	xxxxxxxxxx	5,000	00
(3) Cash discounts, if allowed and deducted on face of invoices, as and when rendered	xxxxxxxxxxxxxxx xxxx	xxxxxxxxxx		
(4) Total output, average price and gross sales proceeds as shown by taxpayer's records (enter 1, 2, 3, the amount in column 3 to be the sum of items 1, 2 and 3 above) Gas Produced, Sold	11,346,172 M. Cu. Ft.	.2753		
Oil	2,476 Bbls.	3.00	3,130,909	07
(5) Freight charges included in Sales Proceeds	xxxxxxxxxxxxxxx xxxx	xxxxxxxxxx		
(6) Total Gross Sales Proceeds (amounts invoiced) as per column 2, page 1	xxxxxxxxxxxxxxx xxxx	xxxxxxxxxx	3,130,909	07

(7) State units used, long or short ton, cubic foot, etc. Gas M. Cu. Ft. Oil—Barrels

(8) State highest and lowest prices obtained during period Oil per Bbl. $4.00—$2.25. Gas same as above.

Note—Average price to be based on prices f. o. b. without deduction for selling or other expense, commissions paid agents out of selling price, losses on account of bad debts or other causes.

Note—Report Commissary Sales under Sch. B-1; rentals, etc., under Sch. D.

SCHEDULE A2. (To be used by Manufacturer Compounders and Persons Preparing Articles for Sale.)

This schedule is to be prepared after COMPUTATION OF TAXES, page 1, has been completed by the making of the proper entries in columns 2 to 6 thereof.

	(1) Total Output in Production Units	(2) Average Price per Unit	(3) Amount Dollars	Cts.
(1) Taxable Sales Proceeds as per column 4, page 1	xxxxxxxxxxxxxxx xxxx	xxxxxxxxxx	$ 157,004	46
Add exemptions claimed as per column 3, page 1:				
(2) Specific exemption at rate of $10,000 annually	xxxxxxxxxxxxxxx xxxx	xxxxxxxxxx	5,000	00
(3) Cash discounts, if allowed and deducted on face of invoices as and when rendered	xxxxxxxxxxxxxxx xxxx	xxxxxxxxxx		
(4) Trade discounts, if allowed and deducted on face of invoices	xxxxxxxxxxxxxxx xxxx	xxxxxxxxxx		
(5) Total output, average price and gross sales proceeds, as shown by records of taxpayer (enter 1, 2, 3, the amount in column 3 to be the sum of items 1, 2, 3 and 4 above) Gasoline	836,368 Gals.	.1937	162,004	46
(6) Freight charges included in Taxpayer's invoices to customers	xxxxxxxxxxxxxxx xxxx	xxxxxxxxxx	13,632	80
(7) Total Gross Sales Proceeds, as shown by invoices, as per column 2, page 1	xxxxxxxxxxxxxxx xxxx	xxxxxxxxxx	175,637	26

(8) What production unit is used? Gallons

(9) If units are not uniform, show production and average price per unit, based on standard production units, if used

(10) State highest and lowest price per standard unit obtained 21c per gallon for gasoline, less freight during period in question.

Note—Average price to be based on prices f. o. b. factory without deduction for commissions or other expense, or losses on account of bad debts or other causes.

SCHEDULE B1. (To be used by all Persons Selling Tangible Property, other than Wholesalers and Jobbers.)

This schedule is to be prepared after COMPUTATION OF TAXES, page 1, has been completed by the making of the proper entries in columns 2 to 6 thereof.

	Amount Dollars	Cts.
(1) Taxable Sales Proceeds as per column 4, page 1 Sold in West Virginia	$ 859,373	10
Add exemptions claimed as per column 3, page 1:		
(2) Specific exemption at rate of $10,000 annually	5,000	00
(3) Cash discounts, if allowed and deducted on face of invoices as and when rendered	None	
(4) Freight charges included in taxpayer's invoices to customers	None	
(5) Trade discounts if allowed and deducted on face of invoices	None	
*(6) Proceeds of shipments to out-of-state points, in continuous transit	None	
*(7) Proceeds of shipments of goods imported into West Virginia direct to customers	None	
(8) Total Sales Proceeds as shown by Taxpayer's Invoices, as per column 2, page 1	864,373	10

Note—Sales of every description, whether made in business or not, whether made at a profit or at a loss, sales of real estate, personal property—such as sales of household goods—are all to be reported under Schedule B-1.

*Monthly totals so arranged as to correspond with taxpayer's records are to be attached as separate exhibits.

Form B-2 (a).

THIS FORM TO BE USED BY WHOLESALERS AND JOBBERS IS TO SHOW TOTAL GROSS PROFITS ON ALL SALES AT WHOLESALE, BOTH TAXABLE AND EXEMPT,--TO BE ATTACHED TO AND MADE A PART OF THE ANNUAL RETURN

Report of HOPE NATURAL GAS COMPANY

Covering the period from July 1, 1921 **to** December 31, 1921

Gas Purchased & Resold Wholesale.	Column 1 Dollars	Column 1 Cts.	Column 2 Dollars	Column 2 Cts.	Column 3 Dollars	Column 3 Cts.
(1) GROSS SALES. (Enter column 2)	xxxx	xxxx	2,238,527	61	xxxx	xxxx
(2) DEDUCTIONS FROM (1) AS UNDER:						
(a) Merchandise Returned. (Enter column 1)			xxxx	xxxx	xxxx	xxxx
(b) Empty Packages Returned. (Enter column 1)			xxxx	xxxx	xxxx	xxxx
(c) Freight Included in (1). (Enter column 1)			xxxx	xxxx	xxxx	xxxx
(d) Wholesale to out of State Points	2,097,264	64	xxxx	xxxx	xxxx	xxxx
TOTAL DEDUCTIONS. (Enter column 2)	xxxx	xxxx	2,097,264	64	xxxx	xxxx
(3) NET SALES. (Enter column 3)	xxxx	xxxx	xxxx	xxxx	141,262	97
(4) DEDUCT COST OF SALES. (See below) (Enter col. 3)	xxxx	xxxx	xxxx	xxxx	73,843	19
(5) GROSS PROFITS. (Enter column 3)	xxxx	xxxx	xxxx	xxxx	67,419	78

COST OF SALES—ITEM (4) ABOVE

(1) INVENTORY AT BEGINNING OF YEAR. (Enter column 2)	xxxx	xxxx			xxxx	xxxx
(2) ADD PURCHASES AS UNDER:						
(a) Purchases at cost. (Enter column 1)	933,165	85	xxxx	xxxx	xxxx	xxxx
(b) Inward Freight. (Enter column 1)			xxxx	xxxx	xxxx	xxxx
(3) TOTAL PURCHASES. (a) plus (b). (Enter column 2)	xxxx	xxxx	933,165	85	xxxx	xxxx
(4) TOTAL of (1) and (3). (Enter column 2)	xxxx	xxxx	933,165	85	xxxx	xxxx
(5) LESS:						
(c) Merchandise Returned. (Enter column 1)			xxxx	xxxx	xxxx	xxxx
(d) Empties Returned. (Enter column 1)			xxxx	xxxx	xxxx	xxxx
(e) Wholesale to out of State Points	859,322	66	xxxx	xxxx	xxxx	xxxx
(6) TOTAL DEDUCTIONS. (Enter column 2)	xxxx	xxxx	859,322	66	xxxx	xxxx
(7) DEDUCT (6) from (4). (Enter column 2)	xxxx	xxxx	73,843	19	xxxx	xxxx
(8) INVENTORY AT END OF YEAR. (Enter column 2)	xxxx	xxxx			xxxx	xxxx
(9) COST OF SALES—(7) less (8). (Enter column 3)	xxxx	xxxx	xxxx	xxxx	73,843	19

Note—If discounts are deducted from Sales, they must also be deducted from Purchases. Discounts to be deductible items from Sales must be "allowed and deducted on the face of the invoice by the seller," as and when rendered.

359=360

ALL SCHEDULES OF THIS RETURN COVER THE PERIOD FROM July 1, 1921 TO Dec. 31, 1921

SCHEDULE B2. (Sales of Tangible Property by Wholesalers and Jobbers.) **This schedule is to be prepared after COMPUTATION OF TAXES, page 1, has been completed by the making of the proper entries in columns 2 to 6 thereof.**	(1) Gross Sales		(2) Gross Profits	
(1a) Gross Sales exclusive of exempted shipments—items 3 and 4 below (enter 1) (1b) Taxable Amount (Gross Profits) as per column 4, page 1 (enter 2)	$ 141,262	97	$ 62,419	78
Add exemptions claimed as per column 3, page 1:				
(2) Specific exemption at rate of $10,000 annually (enter 2)	xxxxxxxxxxxxxxx	xxxxxx	5,000	00
*(3) Proceeds of and Gross Profits on shipments to out-of-state points, in continuous transit (enter 1 and 2)	2,097,264	64	1,237,941	98
*(4) Proceeds of and Gross Profits on shipments imported into West Virginia direct to customers (enter 1 and 2)				
(5) Total Sales Proceeds and Gross Profits, as shown by Taxpayer's records, as per column 2, page 1 (enter 1 and 2)	2,238,527	61	1,305,361	76

Note—Wholesalers and Jobbers are to show method of arriving at gross profits on sheet B-2 (A) which, if not enclosed, will be furnished on application.
*Monthly totals so arranged as to correspond with taxpayer's records are to be attached as separate exhibits.

SCHEDULE C. (Gross Receipts of Banks, Railroad, Telephone and Telegraph Companies, Oil Pipe Line, Water, Navigation or Express Companies.) **This schedule is to be prepared after COMPUTATION OF TAXES, page 1, has been completed by the making of the proper entries in columns 2 to 6 thereof.**	Amount	
(1) Taxable Gross Receipts as per column 4, page 1	$	
Add exemptions claimed, as per column 3, page 1:		
(2) Specific exemption at rate of $10,000 annually		
(3) Cash discounts if allowed and deducted on face of invoices as and when rendered		
(4) Receipts from interstate business	None	
(5) Total Receipts as shown by Taxpayer's records, as per column 2, page 1		

SCHEDULE D. (Gross Receipts of All Persons Engaged in Business or Practising Professions—Not Reported Under Preceding Schedules.) **This schedule is to be prepared after COMPUTATION OF TAXES, page 1, has been completed by the making of the proper entries in columns 2 to 6 thereof.**	Amount	
(1) Taxable amount as per column 4, page 1	$ 29,576	13
Add exemptions claimed as per column 3, page 1:		
(2) Specific exemption at rate of $10,000 annually	5,000	00
(3) Cash discounts if allowed and deducted on face of invoices as and when rendered	34,576	13
(4) Total Receipts, as shown by records of Taxpayer, as per column 2, page 1		

Note—Under Schedule D should be reported by taxpayers whose main activities fall under a preceding schedule, such items as receipts from rentals, interest, commissions. Taxpayers whose main activities fall under Schedule D comprise professional men, businesses not handling tangible property but consisting of sales of services, such as agencies, brokerage business, home insurance companies, investment companies, etc.

The following businesses and professions are among those that are to report under Item D:

Accountants (Certified Public)
Auditors (Public)
Adjusters
Advertising Service
Amusement Companies
Apartments (Renters of)
Architects
Auto Hiring
Automobile Repairing
Automobile Emergency Service
Baggage Transfer Companies
Barbers
Billiard Parlors
Blue Print Companies
Bonding Companies' Agents
Bridge Building Contractors
Brokers (Merchandise)
Brokers (Miscellaneous)
Brokers (Stocks and Bonds)
Cemeteries
Chiropodists
Chiropractors
Cleaning & Dyeing
Chemical Analysts
Coal Agencies
Cold Storage
Collections
Commercial Photographers
Contractors
Court Reporters
Dentists
Detective Agencies
Distributing Agencies
Dressmakers
Dyers, Cleaners and Repairers
Electrical Contractors
Engineering Service
Employment Agencies
Engineers (Civil)
Engineers (Consulting)
Engineers (Electrical)
Engineers (Mining)
Engineers (Mechanical)
Engineers (Structural)
Garages
Geologists
Holding Companies
Hospitals and Dispensaries
Hotels
Income Tax Experts
Insurance Agencies
Investment Companies
Laboratories
Laundries
Lawyers
Leasing Lands and Buildings
Livery Stables
Loan Companies
Mercantile Agencies
Motion Pictures & other Theatres
Osteopathists
Optometrists
Opticians
Photographers
Physicians and Surgeons
Real Estate Agents
Sanitariums
Shoe Repairing
Shorthand Reporters
Taxicabs
Tire Repairing
Veterinarians
Window, Office and House Cleaning

Instructions As To Annual Returns

WHO SHALL MAKE ANNUAL RETURNS UNDER THE BUSINESS-PROFESSION TAX LAW

(1) All corporations and associations organized and existing under the laws of the State of West Virginia.
(2) All foreign corporations admitted to do business in the State of West Virginia.
(3) All persons, firms and co-partnerships engaged in business in the State of West Virginia.
(4) All persons, firms and co-partnerships engaged in professional practice in the State of West Virginia.
(5) All individuals, who, during any "tax year" sell any tangible property whatsoever, real or personal (not including, however, bonds or other evidence of indebtedness, or stocks), the sales value of which exceeds ten thousand ($10,000.00) dollars. The term "tax year" means either the calendar year, or the State fiscal year ending June 30th

Note—Corporations, foreign and domestic, persons, firms, co-partnerships and associations engaged in business are required under revised Rules and Regulations to make returns regardless of whether their gross sales proceeds, gross income or gross profits amount to over $10,000.00 or not, or, in the case of corporations, whether or not any or all of the business is conducted outside of West Virginia.

CONCERNING THE SPECIFIC EXEMPTION

The Act provides a specific exemption of $10,000.00 from the aggregate gross value of all mineral products produced in the State of West Virginia by the taxpayer (Item A1); $10,000.00 from the aggregate gross value of all articles, substances or commodities manufactured compounded or prepared for sale in the State of West Virginia by the taxpayer (Item A2); $10,000.00 from the aggregate gross proceeds from sales of tangible property, real or personal, sold in West Virginia by the taxpayer (Item B1); $10,000.00 from gross profits from business conducted in West Virginia by wholesalers and jobbers (Item B2); $10,000.00 from the aggregate gross income derived from the conduct by the taxpayer in the State of West Virginia of one or more of the businesses named in paragraph (c), section two of the Act (Item C); and $10,000.00 from the aggregate gross income derived from all other businesses not otherwise reported, and from professional activities, in West Virginia by the taxpayer (Item D).

The above exemption is allowable from the gross value, gross sales, gross profits or gross income, as the case may be, derived from a full year's business If the return covers a period of less than a year, the taxpayer is entitled to an exemption of that part of the sum of $10,000.00 which bears the same relation to $10,000.00 as the period of time during which he is engaged in business bears to a full year,—in other words, the exemption is $833.33 for each month covered by the return.

CONCERNING MANNER OF PREPARATION OF ANNUAL RETURN

The annual return must show the actual amount of gross value, gross sales, gross profits or gross income, as the case may be. The amount reported must be derived from the records of the taxpayer, subject to verification, if deemed necessary by the State Tax Commissioner.

The word "taxpayer," as used below, means any individual, association or corporation liable for any tax under the business-profession tax act.

ITEM A1. Each taxpayer engaging or continuing within West Virginia in the business of mining or producing for sale, or for profit, any coal, oil, natural gas, limestone, sand, or other mineral product, shall show in item A1 the actual aggregate value (gross proceeds of sales) of all minerals produced in West Virginia by such taxpayer during the period covered by the return.

ITEM A2. Each taxpayer engaging or continuing within West Virginia in the business of manufacturing, compounding or preparing for sale any article or articles, substance or substances, commodity or commodities, shall show in Item A2 the actual aggregate value (gross proceeds of sales) of all articles substances or commodities manufactured, compounded or prepared in West Virginia by such taxpayer for sale, during the period covered by the return.

ITEM B1. Each taxpayer selling any property, real or personal (except wholesalers and jobbers selling at wholesale), shall show in Item B1 the actual aggregate gross proceeds from sales of all such property sold by such taxpayer in West Virginia during the period covered by the return. Retail mercantile sales, real estate sales, sales by farmers, cattle dealers, produce dealers, etc., sales of capital assets (except bonds, or other evidences of indebtedness, or stocks), and all other sales of tangible property, real or personal, shall be reported under this item.

ITEM B2. Each taxpayer engaging or continuing within West Virginia in the business of selling merchandise at wholesale, in the wholesale or jobbing trade (as defined in the Rules and Regulations pertaining to the Business-Profession Tax issued by the tax commissioner) shall show in Item B2 the actual gross profits derived from all such businesses conducted by such taxpayer in West Virginia during the period covered by the return.

ITEM C. Each taxpayer engaging or continuing within West Virginia in the business of conducting a bank, banking institution, or trust company, or operating a railroad, street railroad, or a telephone, telegraph, oil pipe line, water, navigation, or express company, shall show in Item C the actual aggregate gross receipts derived by such taxpayer from all such businesses conducted in West Virginia.

ITEM D. Each taxpayer engaging or continuing within West Virginia in any profession, or in any business not included in previous headings, shall show in Item D the actual aggregate gross receipts derived from all professional or business activities engaged in by such taxpayer in the State of West Virginia during the period covered by the return. Under this item shall be reported all gross income derived from any profession (such as legal, medical, etc.), or from any business not shown in previous schedules (such as insurance agents or agencies, loan brokers, loan associations, hotels and rooming houses, commission merchants, brokers, etc.) and the taxpayer's pro rata share of the gross income, taxable under item D, of any partnership or association reporting under Sections (a), (b) or (c) of the Act.

WHEN ANNUAL RETURN IS TO BE FILED. Annual return must be filed with the tax commissioner within thirty days from the close of each tax year. Each return is to be accompanied by check for the amount of tax shown by the return to be due the State.

If the Taxpayer's Year Ends June 30th, returns are to be filed, in order, as follows: (1) Quarterly estimated return covering July 1 to September 30; (2) quarterly estimated return covering October 1 to December 31; (3) quarterly estimated return covering January 1 to March 31; and (4) annual return showing actual figures covering the full year from July 1 to June 30.

If the Taxpayer's Year Ends July 31, returns are to be filed as follows: (1) Quarterly estimated return covering August 1 to October 31; (2) quarterly estimated return covering November 1 to January 31; (3) quarterly estimated return covering February 1 to April 30; and (4) annual return showing actual figures covering the full year from August 1 to July 31.

If the Taxpayer's Year Ends December 31, returns are to be filed, in order, as follows: (1) Quarterly estimated return covering the period from January 1 to March 31; (2) quarterly estimated return covering the period from April 1 to June 30; (3) quarterly estimated return covering the period from July 1 to September 30; (4) annual return, showing actual figures, covering the period from January 1 to December 31.

NOTE—The filing of fourth quarterly return has been dispensed with.

Respectfully,

GRANT P. HALL,

State Tax Commissioner.

IF THE SPACE ON THIS RETURN IS INSUFFICIENT TO ENTER ALL PROPER ITEMS OR NOTATIONS SEPARATE SHEETS CONTAINING THE NECESSARY INFORMATION SHOULD BE ATTACHED; WHEN SO ATTACHED, THEY BECOME A PART OF THIS RETURN.

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Form 101—B-P Tax. This return is to be forwarded to the STATE TAX COMMISSIONER, BOX 1216, CHARLESTON, W. VA. 6-11-25-85M

STATE OF WEST VIRGINIA—ANNUAL RETURN—BUSINESS-PROFESSION TAX

(1) For Year Ended Dec. 31st, 1922 (2) or Part Year From _____ To _____

(3) Business Carried on is Production and Distribution of Natural Gas

(4) Books of Account are Kept at (Post Office) Pittsburgh Pa. (P. O. Box 1756)

(5) Principal Place of Business or Chief Works in W. Va. Clarksburg, W. Va.

(6) Name and Address of Outside Expert (if employed) Preparing Return: _____

THIS RETURN WITH CHECK TO COVER TAXES DUE MUST BE RECEIVED WITHIN 30 DAYS FROM END OF PERIOD COVERED BY THE RETURN.

FOR USE OF BUREAU ONLY

Date Received _____
Serial No. _____
From _____ To _____
Audited by _____
Amount Remitted $ _____
Total _____ $ _____
Am't and Date Assessed _____

MADE BY — INSERT NAME AND ADDRESS AND INDICATE BY X THE CLASS TO WHICH YOU BELONG

(COPY)

Hope Natural Gas Company,
545 William Penn Way,
Pittsburgh, Pa.

Individual	
Corporation	X
Partnership	
Association	
Profession	

(7) When business begun? 1898

(8) Did you sell or otherwise dispose of your property, or quit business, during period covered by this return? No

(9) If so, when? _____

(10) If business sold, to whom? _____

(11) If a corporation, when incorporated? Sept. 17 1898; (12) Under the laws of what state? West Va.; (13) When business begun? 1898

(14) If a foreign corporation, when admitted to do business in West Virginia? _____ (15) Did the corporation dissolve or quit business during the period covered by this return? No (16) If so, when? — (17) Did the corporation change its name during the period covered by this return? No (18) If so, old name — (19) New name, —

(20) The Year Ending Dec. 31st Is Designated as the Close of Taxpayer's Year for Tax Report Purposes

COMPUTATION OF TAXES—BUSINESS CONDUCTED IN WEST VIRGINIA

1. Item	2. Gross Amount			3. Exemptions Claimed			4. Taxable Amount			5. Rate	6. Amount of Tax		
	Dollars		Cts.	Dollars		Cts.	Dollars		Cts.		Dollars		Cts.
A1. Gross value of Minerals produced in West Virginia	$ 9	661 265	99	$	10 000	00	$ 9	651 265	99	2/5 of 1%	$ 38	605	06
A2. Gross value of Manufactures produced in West Virginia		416 656	83		58 776	85		357 879	98	1/5 of 1%		715	76
B1. Gross Sales of Tangible Property in West Virginia (except by Wholesalers)	1	497 955	51		10 000	00	1	487 955	51	1/5 of 1%	2	975	91
B2. Gross Profits of Wholesalers and Jobbers		151 737	37		10 000	00		141 737	37	1/3 of 1%		472	46
C. Gross Income of Banks, Railroads, etc.		None								1/5 of 1%			
D. Gross Income of Professions and all other businesses		76 648	97		10 000	00		66 648	97	1/5 of 1%		133	30
E. Total Amount of Taxes due	11	804 264	67		98 776	85	11	705 487	82		$ 42	902	49

*Real estate sales included in amount shown under item B1. $ ~~$10,700~~

F. PAYMENTS ON ESTIMATED RETURNS AS UNDER:

1. 1st Quarter	$ ~~14764~~	~~40~~	
2. 2nd Quarter	~~10045~~	~~28~~	
3. 3rd Quarter	~~6757~~	~~23~~	
4. Tentative Payment on Final Return. (Taxpayers who have been granted an extension of time within which to file final return shall use line 4 to show tentative payment required pending the filing of final return.)	8000	00	
5. Check Enclosed	3335	58	
6. Total to Balance E			$ ~~42,902~~ 49

OATH

I, R. D. Beardsley, do solemnly swear that the statements and items (both as to designations and amounts), entered in the foregoing return and in the supplementary statement and in any additional list or lists attached to or accompanying this return, are, to the best of my knowledge and belief, true and correct in each and every particular; that the figures thereon reported were taken from the original books, papers and records of the taxpayer making return; and that the person signing this return is thoroughly familiar with the business reported in the return and with the original books, papers and records from which the return was prepared.

Sworn to and subscribed before me this 21st day of February, 192 2.

HOPE NATURAL GAS COMPANY
(Name of Taxpayer)

(Seal) G. A. Kinley
Notary Public.

[Seal of Officer Taking Affidavit.]

R. D. Beardsley, Treasurer
(Official title, if made on behalf of a corporation: president, vice-president, secretary or treasurer, as the case may be.)

My commission expires on the ~~26th~~ day of ~~March~~, 192 ~~5~~.

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THIS RETURN IS NOT COMPLETE UNTIL THE SUPPLEMENTARY SCHEDULE OR SCHEDULES CORRESPONDING WITH THE ITEM OR ITEMS ABOVE REPORTED BY THE TAXPAYER ARE FILLED IN

ALL SCHEDULES OF THIS RETURN COVER THE PERIOD FROM Jan 1st TO Dec. 31st, 1922

SCHEDULE A1. (To be used by Miners and Producers of Coal, Oil, Gas and other Minerals).

This schedule is to be prepared after COMPUTATION OF TAXES, page 1, has been completed by the making of the proper entries in columns 2 to 6 thereof.

	(1) Total Output in Production Units	(2) Average Price per Unit	(3) AMOUNT Dollars	Cts.
(1) Taxable Sales Proceeds as per column 4, page 1	xxxxxxxxxxxxxxxx xxxx	xxxxxxxxxx	$ 9,651,265	99
Add exemptions claimed as per column 3, page 1: (2) Specific exemption at rate of $10,000 annually	xxxxxxxxxxxxxxxx xxxx	xxxxxxxxxx	10,000	00
(3) Cash discounts, if allowed and deducted on face of invoices, as and when rendered	xxxxxxxxxxxxxxxx xxxx	xxxxxxxxxx		
(4) Total output, average price and gross sales proceeds as shown by taxpayer's records (enter 1, 2, 3, the amount in column 3 to be the sum of items 1, 2 and 3 above)	Gas Produced and Sold ... 32,381,783 M. Cu. Ft. .2982 2,149.91 Bbls.	$3.11	9,661,265	99
(5) Freight charges included in Sales Proceeds	xxxxxxxxxxxxxxxx xxxx	xxxxxxxxxx		
(6) Total Gross Sales Proceeds (amounts invoiced) as per column 2, page 1	xxxxxxxxxxxxxxxx xxxx	xxxxxxxxxx	9,661,265	99

(7) State units used, long or short ton, cubic foot, etc. Gas M. Cu. Ft.--Oil—Barrels

(8) State highest and lowest prices obtained during period $3.10 for all sales. Gas same as above.

Note—Average price to be based on prices f. o. b. without deduction for selling or other expense, commissions paid agents out of selling price, losses on account of bad debts or other causes.

Note—Report Commissary Sales under Sch. B-1; rentals, etc., under Sch. D.

SCHEDULE A2. (To be used by Manufacturers Compounders and Persons Preparing Articles for Sale.)

This schedule is to be prepared after COMPUTATION OF TAXES, page 1, has been completed by the making of the proper entries in columns 2 to 6 thereof.

	(1) Total Output in Production Units	(2) Average Price per Unit	(3) Amount Dollars	Cts.
(1) Taxable Sales Proceeds as per column 4, page 1	xxxxxxxxxxxxxxxx xxxx	xxxxxxxxxx	$ 357,879	98
Add exemptions claimed as per column 3, page 1: (2) Specific exemption at rate of $10,000 annually	xxxxxxxxxxxxxxxx xxxx	xxxxxxxxxx	10,000	00
(3) Cash discounts, if allowed and deducted on face of invoices as and when rendered	xxxxxxxxxxxxxxxx xxxx	xxxxxxxxxx		
(4) Trade discounts, if allowed and deducted on face of invoices	xxxxxxxxxxxxxxxx xxxx	xxxxxxxxxx		
(5) Total output, average price and gross sales proceeds, as shown by records of taxpayer (enter 1, 2, 3, the amount in column 3 to be the sum of items 1, 2, 3 and 4 above) Gasoline	1,955,768 Gal.	.1881	367,879	98
(6) Freight charges included in Taxpayer's invoices to customers	xxxxxxxxxxxxxxxx xxxx	xxxxxxxxxx	48,776	85
(7) Total Gross Sales Proceeds, as shown by invoices, as per column 2, page 1	xxxxxxxxxxxxxxxx xxxx	xxxxxxxxxx	416,656	83

(8) What production unit is used? Gallons

(9) If units are not uniform, show production and average price per unit, based on standard production units, if used

(10) State highest and lowest price per standard unit obtained 21.76c & 20.89c less freight

Note—Average price to be based on prices f. o. b. factory without deduction for commissions or other expense, or losses on account of bad debts or other causes.

SCHEDULE B1. (To be used by all Persons Selling Tangible Property, other than Wholesalers and Jobbers.)

This schedule is to be prepared after COMPUTATION OF TAXES, page 1, has been completed by the making of the proper entries in columns 2 to 6 thereof.

	Amount Dollars	Cts.
(1) Taxable Sales Proceeds as per column 4, page 1 Sold in West Virginia	$ 1,487,955	51
Add exemptions claimed as per column 3, page 1: (2) Specific exemption at rate of $10,000 annually	10,000	00
(3) Cash discounts, if allowed and deducted on face of invoices as and when rendered	None	
(4) Freight charges included in taxpayer's invoices to customers	None	
(5) Trade discounts if allowed and deducted on face of invoices	None	
*(6) Proceeds of shipments to out-of-state points, in continuous transit	None	
*(7) Proceeds of shipments of goods imported into West Virginia direct to customers	None	
(8) Total Sales Proceeds as shown by Taxpayer's Invoices, as per column 2, page 1	1,497,955	51

Note—Sales of every description, whether made in business or not, whether made at a profit or at a loss, sales of real estate, personal property—such as sales of household goods—are all to be reported under Schedule B-1.

*Monthly totals so arranged as to correspond with taxpayer's records are to be attached as separate exhibits.

Form B-2 (a).

THIS FORM TO BE USED BY WHOLESALERS AND JOBBERS IS TO SHOW TOTAL GROSS PROFITS ON ALL SALES AT WHOLESALE, BOTH TAXABLE AND EXEMPT,--TO BE ATTACHED TO AND MADE A PART OF THE ANNUAL RETURN

Report of HOPE NATURAL GAS COMPANY

Covering the period from January 1st, 1922 **to** December 31st, 1922

Gas Purchased & Resold Wholesale.	Column 1 Dollars	Column 1 Cts.	Column 2 Dollars	Column 2 Cts.	Column 3 Dollars	Column 3 Cts.
(1) GROSS SALES. (Enter column 2)	xxxx xx xx xx xx xx xx	xxxx	5 344 451	84	xxxx xx xx xx xx xx xx	xxxx
(2) DEDUCTIONS FROM (1) AS UNDER:						
(a) Merchandise Returned. (Enter column 1)			xxxx xx xx xx xx xx xx	xxxx	xxxx xx xx xx xx xx xx	xxxx
(b) Empty Packages Returned. (Enter column 1)			xxxx xx xx xx xx xx xx	xxxx	xxxx xx xx xx xx xx xx	xxxx
(c) Freight Included in (1). (Enter column 1)			xxxx xx xx xx xx xx xx	xxxx	xxxx xx xx xx xx xx xx	xxxx
(d) Wholesale to out of State Points	5 025 180	67	xxxx xx xx xx xx xx xx	xxxx	xxxx xx xx xx xx xx xx	xxxx
TOTAL DEDUCTIONS. (Enter column 2)	xxxx xx xx xx xx xx xx	xxxx	5 025 180	67	xxxx xx xx xx xx xx xx	xxxx
(3) NET SALES. (Enter column 3)	xxxx xx xx xx xx xx xx	xxxx	xxxx xx xx xx xx xx xx	xxxx	319 271	17
(4) DEDUCT COST OF SALES. (See below) (Enter col. 3)	xxxx xx xx xx xx xx xx	xxxx	xxxx xx xx xx xx xx xx	xxxx	167 533	79
(5) GROSS PROFITS. (Enter column 3)	xxxx xx xx xx xx xx xx	xxxx	xxxx xx xx xx xx xx xx	xxxx	151 737	38

COST OF SALES—ITEM (4) ABOVE

(1) INVENTORY AT BEGINNING OF YEAR. (Enter column 2)	xxxx xx xx xx xx xx xx	xxxx			xxxx xx xx xx xx xx xx	xxxx
(2) ADD PURCHASES AS UNDER:						
(a) Purchases at cost. (Enter column 1)	2 381 335	55	xxxx xx xx xx xx xx xx	xxxx	xxxx xx xx xx xx xx xx	xxxx
(b) Inward Freight. (Enter column 1)			xxxx xx xx xx xx xx xx	xxxx	xxxx xx xx xx xx xx xx	xxxx
(3) TOTAL PURCHASES. (a) plus (b). (Enter column 2)	xxxx xx xx xx xx xx xx	xxxx	2 381 335	55	xxxx xx xx xx xx xx xx	xxxx
(4) TOTAL of (1) and (3). (Enter column 2)	xxxx xx xx xx xx xx xx	xxxx	2 381 335	55	xxxx xx xx xx xx xx xx	xxxx
(5) LESS:						
(c) Merchandise Returned. (Enter column 1)			xxxx xx xx xx xx xx xx	xxxx	xxxx xx xx xx xx xx xx	xxxx
(d) Empties Returned. (Enter column 1)			xxxx xx xx xx xx xx xx	xxxx	xxxx xx xx xx xx xx xx	xxxx
(e) Wholesale to out of State Points	2 213 801	76	xxxx xx xx xx xx xx xx	xxxx	xxxx xx xx xx xx xx xx	xxxx
(6) TOTAL DEDUCTIONS. (Enter column 2)	xxxx xx xx xx xx xx xx	xxxx	2 213 801	76	xxxx xx xx xx xx xx xx	xxxx
(7) DEDUCT (6) from (4). (Enter column 2)	xxxx xx xx xx xx xx xx	xxxx	167 533	79	xxxx xx xx xx xx xx xx	xxxx
(8) INVENTORY AT END OF YEAR. (Enter column 2)	xxxx xx xx xx xx xx xx	xxxx			xxxx xx xx xx xx xx xx	xxxx
(9) COST OF SALES—(7) less (8). (Enter column 3)	xxxx xx xx xx xx xx xx	xxxx	xxxx xx xx xx xx xx xx	xxxx	167 533	79

Note—If discounts are deducted from Sales, they must also be deducted from Purchases. Discounts to be deductible items from Sales must be "allowed and deducted on the face of the invoice by the seller," as and when rendered.

365=366

ALL SCHEDULES OF THIS RETURN COVER THE PERIOD FROM Jan. 1 TO Dec. 31, 1922

SCHEDULE B2. (Sales of Tangible Property by Wholesalers and Jobbers.) **This schedule is to be prepared after COMPUTATION OF TAXES, page 1, has been completed by the making of the proper entries in columns 2 to 6 thereof.**	(1) Gross Sales		(2) Gross Profits	
(1a) Gross Sales exclusive of exempted shipments—items 3 and 4 below (enter 1) (1b) Taxable Amount (Gross Profits) as per column 4, page 1 (enter 2)	$ 319,271	17	$ 141,737	38
Add exemptions claimed as per column 3, page 1:				
(2) Specific exemption at rate of $10,000 annually (enter 2)	xxxxxxxxxxxxxxx	xxxxx	10,000	00
*(3) Proceeds of and Gross Profits on shipments to out-of-state points, in continuous transit (enter 1 and 2)	5,025,180	67	2,811,378	91
*(4) Proceeds of and Gross Profits on shipments imported into West Virginia direct to customers (enter 1 and 2)	None		None	
(5) Total Sales Proceeds and Gross Profits, as shown by Taxpayer's records, as per column 2, page 1 (enter 1 and 2)	5,344,451	84	2,963,116	29

Note—Wholesalers and Jobbers are to show method of arriving at gross profits on sheet B-2 (A) which, if not enclosed, will be furnished on application.
*Monthly totals so arranged as to correspond with taxpayer's records are to be attached as separate exhibits.

SCHEDULE C. (Gross Receipts of Banks, Railroad, Telephone and Telegraph Companies, Oil Pipe Line, Water, Navigation or Express Companies.) **This schedule is to be prepared after COMPUTATION OF TAXES, page 1, has been completed by the making of the proper entries in columns 2 to 6 thereof.**	Amount	
(1) Taxable Gross Receipts as per column 4, page 1	$	
Add exemptions claimed, as per column 3, page 1:		
(2) Specific exemption at rate of $10,000 annually		
(3) Cash discounts if allowed and deducted on face of invoices as and when rendered		
(4) Receipts from interstate business	None	
(5) Total Receipts as shown by Taxpayer's records, as per column 2, page 1		

SCHEDULE D. (Gross Receipts of All Persons Engaged in Business or Practising Professions—Not Reported Under Preceding Schedules.) **This schedule is to be prepared after COMPUTATION OF TAXES, page 1, has been completed by the making of the proper entries in columns 2 to 6 thereof.**	Amount	
(1) Taxable amount as per column 4, page 1	$ 66,648	97
Add exemptions claimed as per column 3, page 1:	10,000	00
(2) Specific exemption at rate of $10,000 annually	76,648	97
(3) Cash discounts if allowed and deducted on face of invoices as and when rendered		
(4) Total Receipts, as shown by records of Taxpayer, as per column 2, page 1		

Note—Under Schedule D should be reported by taxpayers whose main activities fall under a preceding schedule, such items as receipts from rentals, interest, commissions. Taxpayers whose main activities fall under Schedule D comprise professional men, businesses not handling tangible property but consisting of sales of services, such as agencies, brokerage business, home insurance companies, investment companies, etc.

The following businesses and professions are among those that are to report under Item D:

Accountants (Certified Public)
Auditors (Public)
Adjusters
Advertising Service
Amusement Companies
Apartments (Renters of)
Architects
Auto Hiring
Automobile Repairing
Automobile Emergency Service
Baggage Transfer Companies
Barbers
Billiard Parlors
Blue Print Companies
Bonding Companies' Agents
Bridge Building Contractors
Brokers (Merchandise)
Brokers (Miscellaneous)
Brokers (Stocks and Bonds)
Cemeteries
Chiropodists
Chiropractors
Cleaning & Dyeing
Chemical Analysts
Coal Agencies
Cold Storage
Collections
Commercial Photographers
Contractors
Court Reporters
Dentists
Detective Agencies
Distributing Agencies
Dressmakers
Dyers, Cleaners and Repairers
Electrical Contractors
Engineering Service
Employment Agencies
Engineers (Civil)
Engineers (Consulting)
Engineers (Electrical)
Engineers (Mining)
Engineers (Mechanical)
Engineers (Structural)
Garages
Geologists
Holding Companies
Hospitals and Dispensaries
Hotels
Income Tax Experts
Insurance Agencies
Investment Companies
Laboratories
Laundries
Lawyers
Leasing Lands and Buildings
Livery Stables
Loan Companies
Mercantile Agencies
Motion Pictures & other Theatres
Osteopathists
Optometrists
Opticians
Photographers
Physicians and Surgeons
Real Estate Agents
Sanitariums
Shoe Repairing
Shorthand Reporters
Taxicabs
Tire Repairing
Veterinarians
Window, Office and House Cleaning

Instructions As To Annual Returns

WHO SHALL MAKE ANNUAL RETURNS UNDER THE BUSINESS-PROFESSION TAX LAW

(1) All corporations and associations organized and existing under the laws of the State of West Virginia.
(2) All foreign corporations admitted to do business in the State of West Virginia.
(3) All persons, firms and co-partnerships engaged in business in the State of West Virginia.
(4) All persons, firms and co-partnerships engaged in professional practice in the State of West Virginia.
(5) All individuals, who, during any "tax year" sell any tangible property whatsoever, real or personal (not including, however, bonds or other evidence of indebtedness, or stocks), the sales value of which exceeds ten thousand ($10,000.00) dollars. The term "tax year" means either the calendar year, or the State fiscal year ending June 30th.

Note—Corporations, foreign and domestic, persons, firms, co-partnerships and associations engaged in business are required under revised Rules and Regulations to make returns regardless of whether their gross sales proceeds, gross income or gross profits amount to over $10,000.00 or not, or, in the case of corporations, whether or not any or all of the business is conducted outside of West Virginia.

CONCERNING THE SPECIFIC EXEMPTION

The Act provides a specific exemption of $10,000.00 from the aggregate gross value of all mineral products produced in the State of West Virginia by the taxpayer (Item A1); $10,000.00 from the aggregate gross value of all articles, substances or commodities manufactured, compounded or prepared for sale in the State of West Virginia by the taxpayer (Item A2); $10,000.00 from the aggregate gross proceeds from sales of tangible property, real or personal, sold in West Virginia by the taxpayer (Item B1); $10,000.00 from gross profits from business conducted in West Virginia by wholesalers and jobbers (Item B2); $10,000.00 from the aggregate gross income derived from the conduct by the taxpayer in the State of West Virginia of one or more of the businesses named in paragraph (c), section two of the Act (Item C); and $10,000.00 from the aggregate gross income derived from all other businesses not otherwise reported, and from professional activities, in West Virginia by the taxpayer (Item D).

The above exemption is allowable from the gross value, gross sales, gross profits or gross income, as the case may be, derived from a full year's business. If the return covers a period of less than a year, the taxpayer is entitled to an exemption of that part of the sum of $10,000.00 which bears the same relation to $10,000.00 as the period of time during which he is engaged in business bears to a full year,—in other words, the exemption is $833.33 for each month covered by the return.

CONCERNING MANNER OF PREPARATION OF ANNUAL RETURN

The annual return must show the actual amount of gross value, gross sales, gross profits or gross income, as the case may be. The amount reported must be derived from the records of the taxpayer, subject to verification, if deemed necessary by the State Tax Commissioner.

The word "taxpayer," as used below, means any individual, association or corporation liable for any tax under the business-profession tax act.

ITEM A1. Each taxpayer engaging or continuing within West Virginia in the business of mining or producing for sale, or for profit, any coal, oil, natural gas, limestone, sand, or other mineral product, shall show in item A1 the actual aggregate value (gross proceeds of sales) of all minerals produced in West Virginia by such taxpayer during the period covered by the return.

ITEM A2. Each taxpayer engaging or continuing within West Virginia in the business of manufacturing, compounding or preparing for sale any article or articles, substance or substances, commodity or commodities, shall show in Item A2 the actual aggregate value (gross proceeds of sales) of all articles substances or commodities manufactured, compounded or prepared in West Virginia by such taxpayer for sale, during the period covered by the return.

ITEM B1. Each taxpayer selling any property, real or personal (except wholesalers and jobbers selling at wholesale), shall show in Item B1 the actual aggregate gross proceeds from sales of all such property sold by such taxpayer in West Virginia during the period covered by the return. Retail mercantile sales, real estate sales, sales by farmers, cattle dealers, produce dealers, etc., sales of capital assets (except bonds, or other evidences of indebtedness, or stocks), and all other sales of tangible property, real or personal, shall be reported under this item.

ITEM B2. Each taxpayer engaging or continuing within West Virginia in the business of selling merchandise at wholesale, in the wholesale or jobbing trade (as defined in the Rules and Regulations pertaining to the Business-Profession Tax issued by the tax commissioner) shall show in Item B2 the actual gross profits derived from all such businesses conducted by such taxpayer in West Virginia during the period covered by the return.

ITEM C. Each taxpayer engaging or continuing within West Virginia in the business of conducting a bank, banking institution, or trust company, or operating a railroad, street railroad, or a telephone, telegraph, oil pipe line, water, navigation, or express company, shall show in Item C the actual aggregate gross receipts derived by such taxpayer from all such businesses conducted in West Virginia.

ITEM D. Each taxpayer engaging or continuing within West Virginia in any profession, or in any business not included in previous headings, shall show in Item D the actual aggregate gross receipts derived from all professional or business activities engaged in by such taxpayer in the State of West Virginia during the period covered by the return. Under this item shall be reported all gross income derived from any profession (such as legal, medical, etc.), or from any business not shown in previous schedules (such as insurance agents or agencies, loan brokers, loan associations, hotels and rooming houses, commission merchants, brokers, etc.) and the taxpayer's pro rata share of the gross income, taxable under item D, of any partnership or association reporting under Sections (a), (b) or (c) of the Act.

WHEN ANNUAL RETURN IS TO BE FILED. Annual return must be filed with the tax commissioner within thirty days from the close of each tax year. Each return is to be accompanied by check for the amount of tax shown by the return to be due the State.

If the Taxpayer's Year Ends June 30th, returns are to be filed, in order, as follows: (1) Quarterly estimated return covering July 1 to September 30; (2) quarterly estimated return covering October 1 to December 31; (3) quarterly estimated return covering January 1 to March 31; and (4) annual return showing actual figures covering the full year from July 1 to June 30.

If the Taxpayer's Year Ends July 31, returns are to be filed as follows: (1) Quarterly estimated return covering August 1 to October 31; (2) quarterly estimated return covering November 1 to January 31; (3) quarterly estimated return covering February 1 to April 30; and (4) annual return showing actual figures covering the full year from August 1 to July 31,

If the Taxpayer's Year Ends December 31, returns are to be filed, in order, as follows: (1) Quarterly estimated return covering the period from January 1 to March 31; (2) quarterly estimated return covering the period from April 1 to June 30; (3) quarterly estimated return covering the period from July 1 to September 30; (4) annual return, showing actual figures, covering the period from January 1 to December 31.

NOTE—The filing of fourth quarterly return has been dispensed with.

Respectfully,

GRANT P. HALL,

State Tax Commissioner.

IF THE SPACE ON THIS RETURN IS INSUFFICIENT TO ENTER ALL PROPER ITEMS OR NOTATIONS SEPARATE SHEETS CONTAINING THE NECESSARY INFORMATION SHOULD BE ATTACHED; WHEN SO ATTACHED, THEY BECOME A PART OF THIS RETURN.

L-395
Form 101—B-P Tax. This return is to be forwarded to the STATE TAX COMMISSIONER, BOX 1216, CHARLESTON, W. VA. 6-11-25-85M

STATE OF WEST VIRGINIA—ANNUAL RETURN—BUSINESS-PROFESSION TAX

(1) For Year Ended Dec. 31st, 1923 (2) or Part Year From _____ To _____

(3) Business Carried on is Production and Distribution of Natural Gas

(4) Books of Account are Kept at (Post Office) Pittsburgh Pa. (P. O. Box 1756)

(5) Principal Place of Business or Chief Works in W. Va. Clarksburg, W. Va.

(6) Name and Address of Outside Expert (if employed) Preparing Return: _____

THIS RETURN WITH CHECK TO COVER TAXES DUE MUST BE RECEIVED WITHIN 30 DAYS FROM END OF PERIOD COVERED BY THE RETURN.

FOR USE OF BUREAU ONLY	
Date Received	
Serial No.	
From	To
Audited by	
Amount Remitted $	
Total $	
Am't and Date Assessed	

MADE BY — INSERT NAME AND ADDRESS AND INDICATE BY X THE CLASS TO WHICH YOU BELONG

(COPY)

103-26 Hope Natural Gas Company,
A668-32 Box 1756,
Pittsburgh, Pa.

Individual	
Corporation	X
Partnership	
Association	
Profession	

(7) When business begun? 1898

(8) Did you sell or otherwise dispose of your property, or quit business, during period covered by this return? No

(9) If so, when? _____

(10) If business sold, to whom? _____

(11) If a corporation, when incorporated? Sept. 17 1898; (12) Under the laws of what state? West Va.; (13) When business begun? 1898

(14) If a foreign corporation, when admitted to do business in West Virginia? _____ (15) Did the corporation dissolve or quit business during the period covered by this return? No (16) If so, when? — (17) Did the corporation change its name during the period covered by this return? No (18) If so, old name — (19) New name, —

(20) The Year Ending Dec. 31st Is Designated as the Close of Taxpayer's Year for Tax Report Purposes

COMPUTATION OF TAXES—BUSINESS CONDUCTED IN WEST VIRGINIA

1. Item	2. Gross Amount	3. Exemptions Claimed	4. Taxable Amount	5. Rate	6. Amount of Tax
	Dollars Cts.	Dollars Cts.	Dollars Cts.		Dollars Cts.
A1. Gross value of Minerals produced in West Virginia	$ 9 484 826 86	$ 10 000 00	$ 9 474 826 96	2/5 of 1%	$ 37 899 31
A2. Gross value of Manufactures produced in West Virginia	362 446 19	61 454 60	300 991 59	1/5 of 1%	60 198
B1. Gross Sales of Tangible Property in West Virginia (except by Wholesalers)	1 696 503 60	10 000 00	1 686 503 60	1/5 of 1%	3 373 01
B2. Gross Profits of Wholesalers and Jobbers	198 673 62	10 000 00	188 673 62	1/3 of 1%	628 91
C. Gross Income of Banks, Railroads, etc.	None	None	None	1/5 of 1%	None
D. Gross Income of Professions and all other businesses	21 917 42	10 000 00	11 917 42	1/5 of 1%	23 83
E. Total Amount of Taxes due	11 764 367 79	101 454 60	11 662 913 19		$ 42 527 04

*Real estate sales included in amount shown under item B1. $ None

F. PAYMENTS ON ESTIMATED RETURNS AS UNDER:

1. 1st Quarter	$ 18210	23
2. 2nd Quarter	12612	68
3. 3rd Quarter	3198	81
4. Tentative Payment on Final Return. (Taxpayers who have been granted an extension of time within which to file final return shall use line 4 to show tentative payment required pending the filing of final return.)	6593	22
5. Check Enclosed	1912	10
6. Total to Balance E		$ 42 527 04

OATH

I, R. D. Beardsley, Treasurer, do solemnly swear that the statements and items (both as to designations and amounts), entered in the foregoing return and in the supplementary statement and in any additional list or lists attached to or accompanying this return, are, to the best of my knowledge and belief, true and correct in each and every particular; that the figures thereon reported were taken from the original books, papers and records of the taxpayer making return; and that the person signing this return is thoroughly familiar with the business reported in the return and with the original books, papers and records from which the return was prepared.

Sworn to and subscribed before me this 26th day of March, 1924.

HOPE NATURAL GAS COMPANY
(Name of Taxpayer)

(Seal) G. A. Kinley
Notary Public.

[Seal of Officer Taking Affidavit.]

R. D. Beardsley, Treasurer.
(Official title, if made on behalf of a corporation: president, vice-president, secretary or treasurer, as the case may be.)

My commission expires on the 25th day of March, 1925.

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THIS RETURN IS NOT COMPLETE UNTIL THE SUPPLEMENTARY SCHEDULE OR SCHEDULES CORRESPONDING WITH THE ITEM OR ITEMS ABOVE REPORTED BY THE TAXPAYER ARE FILLED IN

ALL SCHEDULES OF THIS RETURN COVER THE PERIOD FROM Jan. 1st TO Dec. 31st, 1923

SCHEDULE A1. (To be used by Miners and Producers of Coal, Oil, Gas and other Minerals).

This schedule is to be prepared after COMPUTATION OF TAXES, page 1, has been completed by the making of the proper entries in columns 2 to 6 thereof.

	(1) Total Output in Production Units	(2) Average Price per Unit	(3) AMOUNT Dollars	Cts.
(1) Taxable Sales Proceeds as per column 4, page 1	xxxxxxxxxxxxxxxx xxxx	xxxxxxxxxx	$ 9,474,826	96
Add exemptions claimed as per column 3, page 1: (2) Specific exemption at rate of $10,000 annually	xxxxxxxxxxxxxxxx xxxx	xxxxxxxxxx	10,000	00
(3) Cash discounts, if allowed and deducted on face of invoices, as and when rendered	xxxxxxxxxxxxxxxx xxxx	xxxxxxxxxx		
(4) Total output, average price and gross sales proceeds as shown by taxpayer's records (enter 1, 2, 3, the amount in column 3 to be the sum of items 1, 2 and 3 above) — Gas Produced and Sold ... 29,997,599 Cu Ft. .3161; Oil 1,336.72 Bbls. $2.65			9,484,826	96
(5) Freight charges included in Sales Proceeds	xxxxxxxxxxxxxxxx xxxx	xxxxxxxxxx		
(6) Total Gross Sales Proceeds (amounts invoiced) as per column 2, page 1	xxxxxxxxxxxxxxxx xxxx	xxxxxxxxxx	9,484,826	96

(7) State units used, long or short ton, cubic foot, etc. Gas—M Cu. Ft Oil—Barrels

(8) State highest and lowest prices obtained during period Oil 2.65 All Sales Gas—Same as above.

Note—Average price to be based on prices f. o. b. without deduction for selling or other expense, commissions paid agents out of selling price, losses on account of bad debts or other causes.

Note—Report Commissary Sales under Sch. B-1; rentals, etc., under Sch. D.

SCHEDULE A2. (To be used by Manufacturer Compounders and Persons Preparing Articles for Sale.)

This schedule is to be prepared after COMPUTATION OF TAXES, page 1, has been completed by the making of the proper entries in columns 2 to 6 thereof.

	(1) Total Output in Production Units	(2) Average Price per Unit	(3) Amount Dollars	Cts.
(1) Taxable Sales Proceeds as per column 4, page 1	xxxxxxxxxxxxxxxx xxxx	xxxxxxxxxx	$ 300,991	59
Add exemptions claimed as per column 3, page 1: (2) Specific exemption at rate of $10,000 annually	xxxxxxxxxxxxxxxx xxxx	xxxxxxxxxx	10,000	00
(3) Cash discounts, if allowed and deducted on face of invoices as and when rendered	xxxxxxxxxxxxxxxx xxxx	xxxxxxxxxx		
(4) Trade discounts, if allowed and deducted on face of invoices	xxxxxxxxxxxxxxxx xxxx	xxxxxxxxxx		
(5) Total output, average price and gross sales proceeds, as shown by records of taxpayer (enter 1, 2, 3, the amount in column 3 to be the sum of items 1, 2, 3 and 4 above) — Gasoline 2,058,184 Gal. .1511			310,991	59
(6) Freight charges included in Taxpayer's invoices to customers	xxxxxxxxxxxxxxxx xxxx	xxxxxxxxxx	51,454	60
(7) Total Gross Sales Proceeds, as shown by invoices, as per column 2, page 1	xxxxxxxxxxxxxxxx xxxx	xxxxxxxxxx	362.446	19

(8) What production unit is used? Gallons

(9) If units are not uniform, show production and average price per unit, based on standard production units, if used

(10) State highest and lowest price per standard unit obtained 30c High 13.18 low less freight

Note—Average price to be based on prices f. o. b. factory without deduction for commissions or other expense, or losses on account of bad debts or other causes.

SCHEDULE B1. (To be used by all Persons Selling Tangible Property, other than Wholesalers and Jobbers.)

This schedule is to be prepared after COMPUTATION OF TAXES, page 1, has been completed by the making of the proper entries in columns 2 to 6 thereof.

	Amount Dollars	Cts.
(1) Taxable Sales Proceeds as per column 4, page 1	$ 1,686,503	60
Add exemptions claimed as per column 3, page 1: (2) Specific exemption at rate of $10,000 annually	10,000	00
(3) Cash discounts, if allowed and deducted on face of invoices as and when rendered	None	
(4) Freight charges included in taxpayer's invoices to customers	None	
(5) Trade discounts if allowed and deducted on face of invoices	None	
*(6) Proceeds of shipments to out-of-state points, in continuous transit	None	
*(7) Proceeds of shipments of goods imported into West Virginia direct to customers	None	
(8) Total Sales Proceeds as shown by Taxpayer's Invoices, as per column 2, page 1 — Sold in W. Va.	1,696,503	60

Note—Sales of every description, whether made in business or not, whether made at a profit or at a loss, sales of real estate, personal property—such as sales of household goods—are all to be reported under Schedule B-1.

*Monthly totals so arranged as to correspond with taxpayer's records are to be attached as separate exhibits.

Form B-2 (a).

THIS FORM TO BE USED BY WHOLESALERS AND JOBBERS IS TO SHOW TOTAL GROSS PROFITS ON ALL SALES AT WHOLESALE, BOTH TAXABLE AND EXEMPT,--TO BE ATTACHED TO AND MADE A PART OF THE ANNUAL RETURN

Report of HOPE NATURAL GAS COMPANY

Covering the period from January 1st. 1923 **to** December 31. 1923.

Gas Purchased & Resold Wholesale.	Column 1 Dollars	Column 1 Cts.	Column 2 Dollars	Column 2 Cts.	Column 3 Dollars	Column 3 Cts.
(1) GROSS SALES. (Enter column 2)	xxxx	xxxx	7 301 130	48	xxxx	xxxx
(2) DEDUCTIONS FROM (1) AS UNDER: (a) Merchandise Returned. (Enter column 1)			xxxx	xxxx	xxxx	xxxx
(b) Empty Packages Returned. (Enter column 1)			xxxx	xxxx	xxxx	xxxx
(c) Freight Included in (1). (Enter column 1)			xxxx	xxxx	xxxx	xxxx
(d) Wholesale to out of State Points	6 823 644	81	xxxx	xxxx	xxxx	xxxx
TOTAL DEDUCTIONS. (Enter column 2)	xxxx	xxxx	6 823 644	81	xxxx	xxxx
(3) NET SALES. (Enter column 3)	xxxx	xxxx	xxxx	xxxx	477 485	67
(4) DEDUCT COST OF SALES. (See below) (Enter col. 3)	xxxx	xxxx	xxxx	xxxx	278 812	05
(5) GROSS PROFITS. (Enter column 3)	xxxx	xxxx	xxxx	xxxx	198 673	62

COST OF SALES—ITEM (4) ABOVE

(1) INVENTORY AT BEGINNING OF YEAR. (Enter column 2)	xxxx	xxxx			xxxx	xxxx
(2) ADD PURCHASES AS UNDER: (a) Purchases at cost. (Enter column 1)	3 582 681	92	xxxx	xxxx	xxxx	xxxx
(b) Inward Freight. (Enter column 1)			xxxx	xxxx	xxxx	xxxx
(3) TOTAL PURCHASES. (a) plus (b). (Enter column 2)	xxxx	xxxx	3 582 681	92	xxxx	xxxx
(4) TOTAL of (1) and (3). (Enter column 2)	xxxx	xxxx	3 582 681	92	xxxx	xxxx
(5) LESS: (c) Merchandise Returned. (Enter column 1)			xxxx	xxxx	xxxx	xxxx
(d) Empties Returned. (Enter column 1)			xxxx	xxxx	xxxx	xxxx
(e) Wholesale to out of State Points	3 303 869	87	xxxx	xxxx	xxxx	xxxx
(6) TOTAL DEDUCTIONS. (Enter column 2)	xxxx	xxxx	3 303 869	87	xxxx	xxxx
(7) DEDUCT (6) from (4). (Enter column 2)	xxxx	xxxx	278 812	05	xxxx	xxxx
(8) INVENTORY AT END OF YEAR. (Enter column 2)	xxxx	xxxx			xxxx	xxxx
(9) COST OF SALES--(7) less (8). (Enter column 3)	xxxx	xxxx	xxxx	xxxx	278 812	05

Note—If discounts are deducted from Sales, they must also be deducted from Purchases. Discounts to be deductible items from Sales must be "allowed and deducted on the face of the invoice by the seller," as and when rendered.

371=372

ALL SCHEDULES OF THIS RETURN COVER THE PERIOD FROM Jan. 1st TO Dec. 31st, 1923

SCHEDULE B2. (Sales of Tangible Property by Wholesalers and Jobbers.) **This schedule is to be prepared after COMPUTATION OF TAXES, page 1, has been completed by the making of the proper entries in columns 2 to 6 thereof.**	(1) Gross Sales		Gross Profits	
(1a) Gross Sales exclusive of exempted shipments—items 3 and 4 below (enter 1) (1b) Taxable Amount (Gross Profits) as per column 4, page 1 (enter 2)	$ 477,485	67	$ 188,673	62
Add exemptions claimed as per column 3, page 1:				
(2) Specific exemption at rate of $10,000 annually (enter 2)	xxxxxxxxxxxxxxx	xxxxx	10,000	00
*(3) Proceeds of and Gross Profits on shipments to out-of-state points, in continuous transit (enter 1 and 2)	6,823,644	81	3,519,774	94
*(4) Proceeds of and Gross Profits on shipments imported into West Virginia direct to customers (enter 1 and 2)	None		None	
(5) Total Sales Proceeds and Gross Profits, as shown by Taxpayer's records, as per column 2, page 1 (enter 1 and 2)	7,301,130	48	3,718,448	56

Note—Wholesalers and Jobbers are to show method of arriving at gross profits on sheet B-2 (A) which, if not enclosed, will be furnished on application.
*Monthly totals so arranged as to correspond with taxpayer's records are to be attached as separate exhibits.

SCHEDULE C. (Gross Receipts of Banks, Railroad, Telephone and Telegraph Companies. Oil Pipe Line, Water, Navigation or Express Companies.) **This schedule is to be prepared after COMPUTATION OF TAXES, page 1, has been completed by the making of the proper entries in columns 2 to 6 thereof.**	Amount	
(1) Taxable Gross Receipts as per column 4, page 1	$	
Add exemptions claimed, as per column 3, page 1:		
(2) Specific exemption at rate of $10,000 annually		
(3) Cash discounts if allowed and deducted on face of invoices as and when rendered		
(4) Receipts from interstate business	None	
(5) Total Receipts as shown by Taxpayer's records, as per column 2, page 1		

SCHEDULE D. (Gross Receipts of All Persons Engaged in Business or Practising Professions—Not Reported Under Preceding Schedules.) **This schedule is to be prepared after COMPUTATION OF TAXES, page 1, has been completed by the making of the proper entries in columns 2 to 6 thereof.**	Amount	
(1) Taxable amount as per column 4, page 1	$ 11,917	42
Add exemptions claimed as per column 3, page 1:	10,000	00
(2) Specific exemption at rate of $10,000 annually	21,917	42
(3) Cash discounts if allowed and deducted on face of invoices as and when rendered		
(4) Total Receipts, as shown by records of Taxpayer, as per column 2, page 1		

Note—Under Schedule D should be reported by taxpayers whose main activities fall under a preceding schedule, such items as receipts from rentals, interest, commissions. Taxpayers whose main activities fall under Schedule D comprise professional men, businesses not handling tangible property but consisting of sales of services, such as agencies, brokerage business, home insurance companies, investment companies, etc.

The following businesses and professions are among those that are to report under Item D:

Accountants (Certified Public)
Auditors (Public)
Adjusters
Advertising Service
Amusement Companies
Apartments (Renters of)
Architects
Auto Hiring
Automobile Repairing
Automobile Emergency Service
Baggage Transfer Companies
Barbers
Billiard Parlors
Blue Print Companies
Bonding Companies' Agents
Bridge Building Contractors
Brokers (Merchandise)
Brokers (Miscellaneous)
Brokers (Stocks and Bonds)
Cemeteries
Chiropodists
Chiropractors
Cleaning & Dyeing
Chemical Analysts
Coal Agencies
Cold Storage
Collections
Commercial Photographers
Contractors
Court Reporters
Dentists
Detective Agencies
Distributing Agencies
Dressmakers
Dyers, Cleaners and Repairers
Electrical Contractors
Engineering Service
Employment Agencies
Engineers (Civil)
Engineers (Consulting)
Engineers (Electrical)
Engineers (Mining)
Engineers (Mechanical)
Engineers (Structural)
Garages
Geologists
Holding Companies
Hospitals and Dispensaries
Hotels
Income Tax Experts
Insurance Agencies
Investment Companies
Laboratories
Laundries
Lawyers
Leasing Lands and Buildings
Livery Stables
Loan Companies
Mercantile Agencies
Motion Pictures & other Theatres
Osteopathists
Optometrists
Opticians
Photographers
Physicians and Surgeons
Real Estate Agents
Sanitariums
Shoe Repairing
Shorthand Reporters
Taxicabs
Tire Repairing
Veterinarians
Window, Office and House Cleaning

Instructions As To Annual Returns

WHO SHALL MAKE ANNUAL RETURNS UNDER THE BUSINESS-PROFESSION TAX LAW

(1) All corporations and associations organized and existing under the laws of the State of West Virginia.
(2) All foreign corporations admitted to do business in the State of West Virginia.
(3) All persons, firms and co-partnerships engaged in business in the State of West Virginia.
(4) All persons, firms and co-partnerships engaged in professional practice in the State of West Virginia.
(5) All individuals, who, during any "tax year" sell any tangible property whatsoever, real or personal (not including, however, bonds or other evidence of indebtedness, or stocks), the sales value of which exceeds ten thousand ($10,000.00) dollars. The term "tax year" means either the calendar year, or the State fiscal year ending June 30th.

Note—Corporations, foreign and domestic, persons, firms, co-partnerships and associations engaged in business are required under revised Rules and Regulations to make returns regardless of whether their gross sales proceeds, gross income or gross profits amount to over $10,000.00 or not, or, in the case of corporations, whether or not any or all of the business is conducted outside of West Virginia.

CONCERNING THE SPECIFIC EXEMPTION

The Act provides a specific exemption of $10,000.00 from the aggregate gross value of all mineral products produced in the State of West Virginia by the taxpayer (Item A1); $10,000.00 from the aggregate gross value of all articles, substances or commodities manufactured, compounded or prepared for sale in the State of West Virginia by the taxpayer (Item A2); $10,000.00 from the aggregate gross proceeds from sales of tangible property, real or personal, sold in West Virginia by the taxpayer (Item B1); $10,000.00 from gross profits from business conducted in West Virginia by wholesalers and jobbers (Item B2); $10,000.00 from the aggregate gross income derived from the conduct by the taxpayer in the State of West Virginia of one or more of the businesses named in paragraph (c), section two of the Act (Item C); and $10,000.00 from the aggregate gross income derived from all other businesses not otherwise reported, and from professional activities, in West Virginia by the taxpayer (Item D).

The above exemption is allowable from the gross value, gross sales, gross profits or gross income, as the case may be, derived from a full year's business. If the return covers a period of less than a year, the taxpayer is entitled to an exemption of that part of the sum of $10,000.00 which bears the same relation to $10,000.00 as the period of time during which he is engaged in business bears to a full year,—in other words, the exemption is $833.33 for each month covered by the return.

CONCERNING MANNER OF PREPARATION OF ANNUAL RETURN

The annual return must show the actual amount of gross value, gross sales, gross profits or gross income, as the case may be. The amount reported must be derived from the records of the taxpayer, subject to verification, if deemed necessary by the State Tax Commissioner.

The word "taxpayer," as used below, means any individual, association or corporation liable for any tax under the business-profession tax act.

ITEM A1. Each taxpayer engaging or continuing within West Virginia in the business of mining or producing for sale, or for profit, any coal, oil, natural gas, limestone, sand, or other mineral product, shall show in item A1 the actual aggregate value (gross proceeds of sales) of all minerals produced in West Virginia by such taxpayer during the period covered by the return.

ITEM A2. Each taxpayer engaging or continuing within West Virginia in the business of manufacturing, compounding or preparing for sale any article or articles, substance or substances, commodity or commodities, shall show in Item A2 the actual aggregate value (gross proceeds of sales) of all articles substances or commodities manufactured, compounded or prepared in West Virginia by such taxpayer for sale, during the period covered by the return.

ITEM B1. Each taxpayer selling any property, real or personal (except wholesalers and jobbers selling at wholesale), shall show in Item B1 the actual aggregate gross proceeds from sales of all such property sold by such taxpayer in West Virginia during the period covered by the return. Retail mercantile sales, real estate sales, sales by farmers, cattle dealers, produce dealers, etc., sales of capital assets (except bonds, or other evidences of indebtedness, or stocks), and all other sales of tangible property, real or personal, shall be reported under this item.

ITEM B2. Each taxpayer engaging or continuing within West Virginia in the business of selling merchandise at wholesale, in the wholesale or jobbing trade (as defined in the Rules and Regulations pertaining to the Business-Profession Tax issued by the tax commissioner) shall show in Item B2 the actual gross profits derived from all such businesses conducted by such taxpayer in West Virginia during the period covered by the return.

ITEM C. Each taxpayer engaging or continuing within West Virginia in the business of conducting a bank, banking institution, or trust company, or operating a railroad, street railroad, or a telephone, telegraph, oil pipe line, water, navigation, or express company, shall show in Item C the actual aggregate gross receipts derived by such taxpayer from all such businesses conducted in West Virginia.

ITEM D. Each taxpayer engaging or continuing within West Virginia in any profession, or in any business not included in previous headings, shall show in Item D the actual aggregate gross receipts derived from all professional or business activities engaged in by such taxpayer in the State of West Virginia during the period covered by the return. Under this item shall be reported all gross income derived from any profession (such as legal, medical, etc.), or from any business not shown in previous schedules (such as insurance agents or agencies, loan brokers, loan associations, hotels and rooming houses, commission merchants, brokers, etc.) and the taxpayer's pro rata share of the gross income, taxable under item D, of any partnership or association reporting under Sections (a), (b) or (c) of the Act.

WHEN ANNUAL RETURN IS TO BE FILED. Annual return must be filed with the tax commissioner within thirty days from the close of each tax year. Each return is to be accompanied by check for the amount of tax shown by the return to be due the State.

If the Taxpayer's Year Ends June 30th, returns are to be filed, in order, as follows: (1) Quarterly estimated return covering July 1 to September 30; (2) quarterly estimated return covering October 1 to December 31; (3) quarterly estimated return covering January 1 to March 31; and (4) annual return showing actual figures covering the full year from July 1 to June 30.

If the Taxpayer's Year Ends July 31, returns are to be filed as follows: (1) Quarterly estimated return covering August 1 to October 31; (2) quarterly estimated return covering November 1 to January 31; (3) quarterly estimated return covering February 1 to April 30; and (4) annual return showing actual figures covering the full year from August 1 to July 31.

If the Taxpayer's Year Ends December 31, returns are to be filed, in order, as follows: (1) Quarterly estimated return covering the period from January 1 to March 31; (2) quarterly estimated return covering the period from April 1 to June 30; (3) quarterly estimated return covering the period from July 1 to September 30; (4) annual return, showing actual figures, covering the period from January 1 to December 31.

NOTE—The filing of fourth quarterly return has been dispensed with.

Respectfully,

GRANT P. HALL,

State Tax Commissioner.

IF THE SPACE ON THIS RETURN IS INSUFFICIENT TO ENTER ALL PROPER ITEMS OR NOTATIONS SEPARATE SHEETS CONTAINING THE NECESSARY INFORMATION SHOULD BE ATTACHED; WHEN SO ATTACHED, THEY BECOME A PART OF THIS RETURN.

L-295
Form 101—B-P Tax. This return is to be forwarded to the STATE TAX COMMISSIONER, BOX 1216, CHARLESTON, W. VA. 6-11-25-85M

STATE OF WEST VIRGINIA—ANNUAL RETURN—BUSINESS-PROFESSION TAX

(1) For Year Ended Dec. 31, 1924 (2) or Part Year From ____ To ____

(3) Business Carried on is Production and Distribution of Natural Gas

(4) Books of Account are Kept at (Post Office) Pittsburgh Pa. (P. O. Box 1756)

(5) Principal Place of Business or Chief Works in W. Va. Clarksburg, W. Va.

(6) Name and Address of Outside Expert (if employed) Preparing Return: ____

THIS RETURN WITH CHECK TO COVER TAXES DUE MUST BE RECEIVED WITHIN 30 DAYS FROM END OF PERIOD COVERED BY THE RETURN.

FOR USE OF BUREAU ONLY

Date Received ____
Serial No. ____
From ____ To ____
Audited by ____
Amount Remitted $ ____
Total $ ____
Am't and Date Assessed ____

MADE BY

INSERT NAME AND ADDRESS AND INDICATE BY X THE CLASS TO WHICH YOU BELONG

(COPY)

103-26 Hope Natural Gas Company,
A668-32 Box 1756,
Pittsburgh, Pa.

Individual	
Corporation	X
Partnership	
Association	
Profession	

(7) When business begun? 1898

(8) Did you sell or otherwise dispose of your property, or quit business, during period covered by this return? No

(9) If so, when? ____

(10) If business sold, to whom? ____

(11) If a corporation, when incorporated? Sept. 17 1898 ; (12) Under the laws of what state? West Va. ; (13) When business begun? 1898

(14) If a foreign corporation, when admitted to do business in West Virginia? ____ (15) Did the corporation dissolve or quit business during the period covered by this return? No (16) If so, when? ____ (17) Did the corporation change its name during the period covered by this return? No (18) If so, old name ____ (19) New name, ____

(20) **The Year Ending** Dec. 31st **Is Designated as the Close of Taxpayer's Year for Tax Report Purposes**

COMPUTATION OF TAXES—BUSINESS CONDUCTED IN WEST VIRGINIA

1. Item	2. Gross Amount			3. Exemptions Claimed			4. Taxable Amount			5. Rate	6. Amount of Tax		
	Dollars		Cts.	Dollars		Cts.	Dollars		Cts.		Dollars		Cts.
A1. Gross value of Minerals produced in West Virginia	$ 8	887	613	82	$ 10	000	00	$ 8	877	613	82	2/5 of 1%	$35	510	46
A2. Gross value of Manufactures produced in West Virginia		183	132	86	40	099	93		143	032	93	1/5 of 1%		286	06
B1. Gross Sales of Tangible Property in West Virginia (except by Wholesalers)	1	697	950	44	10	000	00	1	687	950	44	1/5 of 1%	3	375	90
B2. Gross Profits of Wholesalers and Jobbers		311	941	38	10	000	00		301	941	38	1/3 of 1%	1	006	47
C. Gross Income of Banks, Railroads, etc.		None			None				None			1/5 of 1%	None		
D. Gross Income of Professions and all other businesses		21	160	79	10	000	00		11	160	79	1/5 of 1%		22	32
E. Total Amount of Taxes due	11	101	799	29	80	099	93	11	021	699	36		$40	201	21

*Real estate sales included in amount shown under item B1. $ None

F. PAYMENTS ON ESTIMATED RETURNS AS UNDER:

1. 1st Quarter	$ 17856	11
2. 2nd Quarter	11639	14
3. 3rd Quarter	1657	42
4. Tentative Payment on Final Return. (Taxpayers who have been granted an extension of time within which to file final return shall use line 4 to show tentative payment required pending the filing of final return.)	5102	95
5. Check Enclosed	3945	59
6. Total to Balance E		$40 201 21

OATH

I, R. D. Beardsley, do solemnly swear that the statements and items (both as to designations and amounts), entered in the foregoing return and in the supplementary statement and in any additional list or lists attached to or accompanying this return, are, to the best of my knowledge and belief, true and correct in each and every particular; that the figures thereon reported were taken from the original books, papers and records of the taxpayer making return; and that the person signing this return is thoroughly familiar with the business reported in the return and with the original books, papers and records from which the return was prepared.

Sworn to and subscribed before me this 12th day of March, 192 5.

HOPE NATURAL GAS COMPANY
(Name of Taxpayer)

(Seal) G. A. Kinley
Notary Public.

[Seal of Officer Taking Affidavit.]

R. D. Beardsley, Treasurer
(Official title, if made on behalf of a corporation: president, vice-president, secretary or treasurer, as the case may be.)

My commission expires on the 25th day of March, 192 5.

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THIS RETURN IS NOT COMPLETE UNTIL THE SUPPLEMENTARY SCHEDULE OR SCHEDULES CORRESPONDING WITH THE ITEM OR ITEMS ABOVE REPORTED BY THE TAXPAYER ARE FILLED IN

ALL SCHEDULES OF THIS RETURN COVER THE PERIOD FROM Jan. 1 1924 TO December 31st, 1924

SCHEDULE A1. (To be used by Miners and Producers of Coal, Oil, Gas and other Minerals).

This schedule is to be prepared after COMPUTATION OF TAXES, page 1, has been completed by the making of the proper entries in columns 2 to 6 thereof.

	(1) Total Output in Production Units	(2) Average Price per Unit	(3) AMOUNT Dollars	Cts.
(1) Taxable Sales Proceeds as per column 4, page 1	xxxxxxxxxxxxxxx	xxxxxxxxxx	$ 8,877,613	82
Add exemptions claimed as per column 3, page 1: (2) Specific exemption at rate of $10,000 annually	xxxxxxxxxxxxxxx	xxxxxxxxxx	10,000	00
(3) Cash discounts, if allowed and deducted on face of invoices, as and when rendered	xxxxxxxxxxxxxxx	xxxxxxxxxx		
(4) Total output, average price and gross sales proceeds as shown by taxpayer's records (enter 1, 2, 3, the amount in column 3 to be the sum of items 1, 2 and 3 above)	Gas Produced and Sold 26,589,559 M. Cu. Ft. .3341 / Oil 1,690.72 Bbl. 2.88		8,887,613	82
(5) Freight charges included in Sales Proceeds	xxxxxxxxxxxxxxx	xxxxxxxxxx		
(6) Total Gross Sales Proceeds (amounts invoiced) as per column 2, page 1	xxxxxxxxxxxxxxx	xxxxxxxxxx	8,887,613	82

(7) State units used, long or short ton, cubic foot, etc. Gas—M Cu. Ft. Oil—Barrels

(8) State highest and lowest prices obtained during period Oil 2.88 All Sales Gas Same as Above

Note—Average price to be based on prices f. o. b. without deduction for selling or other expense, commissions paid agents out of selling price, losses on account of bad debts or other causes.

Note—Report Commissary Sales under Sch. B-1; rentals, etc., under Sch. D.

SCHEDULE A2. (To be used by Manufacturers, Compounders and Persons Preparing Articles for Sale.)

This schedule is to be prepared after COMPUTATION OF TAXES, page 1, has been completed by the making of the proper entries in columns 2 to 6 thereof.

	(1) Total Output in Production Units	(2) Average Price per Unit	(3) Amount Dollars	Cts.
(1) Taxable Sales Proceeds as per column 4, page 1	xxxxxxxxxxxxxxx	xxxxxxxxxx	$ 143,032	83
Add exemptions claimed as per column 3, page 1: (2) Specific exemption at rate of $10,000 annually	xxxxxxxxxxxxxxx	xxxxxxxxxx	10,000	00
(3) Cash discounts, if allowed and deducted on face of invoices as and when rendered	xxxxxxxxxxxxxxx	xxxxxxxxxx		
(4) Trade discounts, if allowed and deducted on face of invoices	xxxxxxxxxxxxxxx	xxxxxxxxxx		
(5) Total output, average price and gross sales proceeds, as shown by records of taxpayer (enter 1, 2, 3, the amount in column 3 to be the sum of items 1, 2, 3 and 4 above) Gasoline	1,216,478 Gals.	1258	153,032	93
(6) Freight charges included in Taxpayer's invoices to customers	xxxxxxxxxxxxxxx	xxxxxxxxxx	30,099	93
(7) Total Gross Sales Proceeds, as shown by invoices, as per column 2, page 1	xxxxxxxxxxxxxxx	xxxxxxxxxx	183,132	86

(8) What production unit is used? Gallons

(9) If units are not uniform, show production and average price per unit, based on standard production units, if used

(10) State highest and lowest price per standard unit obtained 22c High .1148c Low, Less Freight on low

Note—Average price to be based on prices f. o. b. factory without deduction for commissions or other expense, or losses on account of bad debts or other causes.

SCHEDULE B1. (To be used by all Persons Selling Tangible Property, other than Wholesalers and Jobbers.)

This schedule is to be prepared after COMPUTATION OF TAXES, page 1, has been completed by the making of the proper entries in columns 2 to 6 thereof.

	Amount Dollars	Cts.
(1) Taxable Sales Proceeds as per column 4, page 1	$ 1,687,950	44
Add exemptions claimed as per column 3, page 1: (2) Specific exemption at rate of $10,000 annually	10,000	00
(3) Cash discounts, if allowed and deducted on face of invoices as and when rendered	None	
(4) Freight charges included in taxpayer's invoices to customers	None	
(5) Trade discounts if allowed and deducted on face of invoices	None	
*(6) Proceeds of shipments to out-of-state points, in continuous transit	None	
*(7) Proceeds of shipments of goods imported into West Virginia direct to customers	None	
(8) Total Sales Proceeds as shown by Taxpayer's Invoices, as per column 2, page 1 Sold in West Va.	1,697,950	44

Note—Sales of every description, whether made in business or not, whether made at a profit or at a loss, sales of real estate, personal property—such as sales of household goods—are all to be reported under Schedule B-1.

*Monthly totals so arranged as to correspond with taxpayer's records are to be attached as separate exhibits.

Form B-2 (a).

THIS FORM TO BE USED BY WHOLESALERS AND JOBBERS IS TO SHOW TOTAL GROSS PROFITS ON ALL SALES AT WHOLESALE, BOTH TAXABLE AND EXEMPT,--TO BE ATTACHED TO AND MADE A PART OF THE ANNUAL RETURN

Report of HOPE NATURAL GAS COMPANY

Covering the period from January 1st, 1924 **to** December 31st, 1924

Gas Purchased & Resold Wholesale.	Column 1 Dollars	Column 1 Cts.	Column 2 Dollars	Column 2 Cts.	Column 3 Dollars	Column 3 Cts.
(1) GROSS SALES. (Enter column 2)	xxxx	xxxx	8,147,580	59	xxxx	xxxx
(2) DEDUCTIONS FROM (1) AS UNDER:						
(a) Merchandise Returned. (Enter column 1)			xxxx	xxxx	xxxx	xxxx
(b) Empty Packages Returned. (Enter column 1)			xxxx	xxxx	xxxx	xxxx
(c) Freight Included in (1). (Enter column 1)			xxxx	xxxx	xxxx	xxxx
(d) Wholesale to out of State Points	7,440,761	55	xxxx	xxxx	xxxx	xxxx
TOTAL DEDUCTIONS. (Enter column 2)	xxxx	xxxx	7,440,761	55	xxxx	xxxx
(3) NET SALES. (Enter column 3)	xxxx	xxxx	xxxx	xxxx	706,825	04
(4) DEDUCT COST OF SALES. (See below) (Enter col. 3)	xxxx	xxxx	xxxx	xxxx	394,883	84
(5) GROSS PROFITS. (Enter column 3)	xxxx	xxxx	xxxx	xxxx	311,941	20

COST OF SALES—ITEM (4) ABOVE

(1) INVENTORY AT BEGINNING OF YEAR. (Enter column 2)	xxxx	xxxx			xxxx	xxxx
(2) ADD PURCHASES AS UNDER:						
(a) Purchases at cost. (Enter column 1)	4,208,747	49	xxxx	xxxx	xxxx	xxxx
(b) Inward Freight. (Enter column 1)			xxxx	xxxx	xxxx	xxxx
(3) TOTAL PURCHASES. (a) plus (b). (Enter column 2)	xxxx	xxxx	4,208,747	49	xxxx	xxxx
(4) TOTAL of (1) and (3). (Enter column 2)	xxxx	xxxx	4,208,747	49	xxxx	xxxx
(5) LESS:						
(c) Merchandise Returned. (Enter column 1)			xxxx	xxxx	xxxx	xxxx
(d) Empties Returned. (Enter column 1)			xxxx	xxxx	xxxx	xxxx
(e) Wholesale to out of State Points	3,813,863	65	xxxx	xxxx	xxxx	xxxx
(6) TOTAL DEDUCTIONS. (Enter column 2)	xxxx	xxxx	3,813,863	65	xxxx	xxxx
(7) DEDUCT (6) from (4). (Enter column 2)	xxxx	xxxx	394,883	84	xxxx	xxxx
(8) INVENTORY AT END OF YEAR. (Enter column 2)	xxxx	xxxx			xxxx	xxxx
(9) COST OF SALES—(7) less (8). (Enter column 3)	xxxx	xxxx	xxxx	xxxx	394,883	84

Note—If discounts are deducted from Sales, they must also be deducted from Purchases. Discounts to be deductible items from Sales must be "allowed and deducted on the face of the invoice by the seller," as and when rendered.

377=378

ALL SCHEDULES OF THIS RETURN COVER THE PERIOD FROM Jan. 1st, 1924 TO December 3st, 1924

SCHEDULE B2. (Sales of Tangible Property by Wholesalers and Jobbers.) **This schedule is to be prepared after COMPUTATION OF TAXES, page 1, has been completed by the making of the proper entries in columns 2 to 6 thereof.**	(1) Gross Sales		(2) Gross Profits	
(1a) Gross Sales exclusive of exempted shipments—items 3 and 4 below (enter 1) (1b) Taxable Amount (Gross Profits) as per column 4, page 1 (enter 2)	$ 706,825	04	$ 301,941	20
Add exemptions claimed as per column 3, page 1:				
(2) Specific exemption at rate of $10,000 annually (enter 2)			10,000	00
*(3) Proceeds of and Gross Profits on shipments to out-of-state points, in continuous transit (enter 1 and 2)	7,440,761	55	3,626,897	90
*(4) Proceeds of and Gross Profits on shipments imported into West Virginia direct to customers (enter 1 and 2)	None.		None	
(5) Total Sales Proceeds and Gross Profits, as shown by Taxpayer's records, as per column 2, page 1 (enter 1 and 2)	8,147,586	59	3,938,839	10

Note—Wholesalers and Jobbers are to show method of arriving at gross profits on sheet B-2 (A) which, if not enclosed, will be furnished on application.
*Monthly totals so arranged as to correspond with taxpayer's records are to be attached as separate exhibits.

SCHEDULE C. (Gross Receipts of Banks, Railroad, Telephone and Telegraph Companies, Oil Pipe Line, Water, Navigation or Express Companies.) **This schedule is to be prepared after COMPUTATION OF TAXES, page 1, has been completed by the making of the proper entries in columns 2 to 6 thereof.**	Amount	
(1) Taxable Gross Receipts as per column 4, page 1	$	
Add exemptions claimed, as per column 3, page 1:		
(2) Specific exemption at rate of $10,000 annually		
(3) Cash discounts if allowed and deducted on face of invoices as and when rendered		
(4) Receipts from interstate business	None	
(5) Total Receipts as shown by Taxpayer's records, as per column 2, page 1		

SCHEDULE D. (Gross Receipts of All Persons Engaged in Business or Practising Professions—Not Reported Under Preceding Schedules.) **This schedule is to be prepared after COMPUTATION OF TAXES, page 1, has been completed by the making of the proper entries in columns 2 to 6 thereof.**	Amount	
(1) Taxable amount as per column 4, page 1	$ 11,160	79
Add exemptions claimed as per column 3, page 1:	10,000	00
(2) Specific exemption at rate of $10,000 annually	21,160	79
(3) Cash discounts if allowed and deducted on face of invoices as and when rendered		
(4) Total Receipts, as shown by records of Taxpayer, as per column 2, page 1		

Note—Under Schedule D should be reported by taxpayers whose main activities fall under a preceding schedule, such items as receipts from rentals, interest, commissions. Taxpayers whose main activities fall under Schedule D comprise professional men, businesses not handling tangible property but consisting of sales of services, such as agencies, brokerage business, home insurance companies, investment companies, etc.

The following businesses and professions are among those that are to report under Item D:

Accountants (Certified Public)
Auditors (Public)
Adjusters
Advertising Service
Amusement Companies
Apartments (Renters of)
Architects
Auto Hiring
Automobile Repairing
Automobile Emergency Service
Baggage Transfer Companies
Barbers
Billiard Parlors
Blue Print Companies
Bonding Companies' Agents
Bridge Building Contractors
Brokers (Merchandise)
Brokers (Miscellaneous)
Brokers (Stocks and Bonds)
Cemeteries
Chiropodists
Chiropractors
Cleaning & Dyeing
Chemical Analysts
Coal Agencies
Cold Storage
Collections
Commercial Photographers
Contractors
Court Reporters
Dentists
Detective Agencies
Distributing Agencies
Dressmakers
Dyers, Cleaners and Repairers
Electrical Contractors
Engineering Service
Employment Agencies
Engineers (Civil)
Engineers (Consulting)
Engineers (Electrical)
Engineers (Mining)
Engineers (Mechanical)
Engineers (Structural)
Garages
Geologists
Holding Companies
Hospitals and Dispensaries
Hotels
Income Tax Experts
Insurance Agencies
Investment Companies
Laboratories
Laundries
Lawyers
Leasing Lands and Buildings
Livery Stables
Loan Companies
Mercantile Agencies
Motion Pictures & other Theatres
Osteopathists
Optometrists
Opticians
Photographers
Physicians and Surgeons
Real Estate Agents
Sanitariums
Shoe Repairing
Shorthand Reporters
Taxicabs
Tire Repairing
Veterinarians
Window, Office and House Cleaning

Instructions As To Annual Returns

WHO SHALL MAKE ANNUAL RETURNS UNDER THE BUSINESS-PROFESSION TAX LAW

(1) All corporations and associations organized and existing under the laws of the State of West Virginia.
(2) All foreign corporations admitted to do business in the State of West Virginia.
(3) All persons, firms and co-partnerships engaged in business in the State of West Virginia.
(4) All persons, firms and co-partnerships engaged in professional practice in the State of West Virginia.
(5) All individuals, who, during any "tax year" sell any tangible property whatsoever, real or personal (not including, however, bonds or other evidence of indebtedness, or stocks), the sales value of which exceeds ten thousand ($10,000.00) dollars. The term "tax year" means either the calendar year, or the State fiscal year ending June 30th.

Note—Corporations, foreign and domestic, persons, firms, co-partnerships and associations engaged in business are required under revised Rules and Regulations to make returns regardless of whether their gross sales proceeds, gross income or gross profits amount to over $10,000.00 or not, or, in the case of corporations, whether or not any or all of the business is conducted outside of West Virginia.

CONCERNING THE SPECIFIC EXEMPTION

The Act provides a specific exemption of $10,000.00 from the aggregate gross value of all mineral products produced in the State of West Virginia by the taxpayer (Item A1); $10,000.00 from the aggregate gross value of all articles, substances or commodities manufactured, compounded or prepared for sale in the State of West Virginia by the taxpayer (Item A2); $10,000.00 from the aggregate gross proceeds from sales of tangible property, real or personal, sold in West Virginia by the taxpayer (Item B1); $10,000.00 from gross profits from business conducted in West Virginia by wholesalers and jobbers (Item B2); $10,000.00 from the aggregate gross income derived from the conduct by the taxpayer in the State of West Virginia of one or more of the businesses named in paragraph (c), section two of the Act (Item C); and $10,000.00 from the aggregate gross income derived from all other businesses not otherwise reported, and from professional activities, in West Virginia by the taxpayer (Item D).

The above exemption is allowable from the gross value, gross sales, gross profits or gross income, as the case may be, derived from a full year's business. If the return covers a period of less than a year, the taxpayer is entitled to an exemption of that part of the sum of $10,000.00 which bears the same relation to $10,000.00 as the period of time during which he is engaged in business bears to a full year,—in other words, the exemption is $833.33 for each month covered by the return.

CONCERNING MANNER OF PREPARATION OF ANNUAL RETURN

The annual return must show the actual amount of gross value, gross sales, gross profits or gross income, as the case may be. The amount reported must be derived from the records of the taxpayer, subject to verification, if deemed necessary by the State Tax Commissioner.

The word "taxpayer," as used below, means any individual, association or corporation liable for any tax under the business-profession tax act.

ITEM A1. Each taxpayer engaging or continuing within West Virginia in the business of mining or producing for sale, or for profit, any coal, oil, natural gas, limestone, sand, or other mineral product, shall show in item A1 the actual aggregate value (gross proceeds of sales) of all minerals produced in West Virginia by such taxpayer during the period covered by the return.

ITEM A2. Each taxpayer engaging or continuing within West Virginia in the business of manufacturing, compounding or preparing for sale any article or articles, substance or substances, commodity or commodities, shall show in Item A2 the actual aggregate value (gross proceeds of sales) of all articles substances or commodities manufactured, compounded or prepared in West Virginia by such taxpayer for sale, during the period covered by the return.

ITEM B1. Each taxpayer selling any property, real or personal (except wholesalers and jobbers selling at wholesale), shall show in Item B1 the actual aggregate gross proceeds from sales of all such property sold by such taxpayer in West Virginia during the period covered by the return. Retail mercantile sales, real estate sales, sales by farmers, cattle dealers, produce dealers, etc., sales of capital assets (except bonds, or other evidences of indebtedness, or stocks), and all other sales of tangible property, real or personal, shall be reported under this item.

ITEM B2. Each taxpayer engaging or continuing within West Virginia in the business of selling merchandise at wholesale, in the wholesale or jobbing trade (as defined in the Rules and Regulations pertaining to the Business-Profession Tax issued by the tax commissioner) shall show in Item B2 the actual gross profits derived from all such businesses conducted by such taxpayer in West Virginia during the period covered by the return.

ITEM C. Each taxpayer engaging or continuing within West Virginia in the business of conducting a bank, banking institution, or trust company, or operating a railroad, street railroad, or a telephone, telegraph, oil pipe line, water, navigation, or express company, shall show in Item C the actual aggregate gross receipts derived by such taxpayer from all such businesses conducted in West Virginia.

ITEM D. Each taxpayer engaging or continuing within West Virginia in any profession, or in any business not included in previous headings, shall show in Item D the actual aggregate gross receipts derived from all professional or business activities engaged in by such taxpayer in the State of West Virginia during the period covered by the return. Under this item shall be reported all gross income derived from any profession (such as legal, medical, etc.), or from any business not shown in previous schedules (such as insurance agents or agencies, loan brokers, loan associations, hotels and rooming houses, commission merchants, brokers, etc.) and the taxpayer's pro rata share of the gross income, taxable under item D, of any partnership or association reporting under Sections (a), (b) or (c) of the Act.

WHEN ANNUAL RETURN IS TO BE FILED. Annual return must be filed with the tax commissioner within thirty days from the close of each tax year. Each return is to be accompanied by check for the amount of tax shown by the return to be due the State.

If the Taxpayer's Year Ends June 30th, returns are to be filed, in order, as follows: (1) Quarterly estimated return covering July 1 to September 30; (2) quarterly estimated return covering October 1 to December 31; (3) quarterly estimated return covering January 1 to March 31; and (4) annual return showing actual figures covering the full year from July 1 to June 30.

If the Taxpayer's Year Ends July 31, returns are to be filed as follows: (1) Quarterly estimated return covering August 1 to October 31; (2) quarterly estimated return covering November 1 to January 31; (3) quarterly estimated return covering February 1 to April 30; and (4) annual return showing actual figures covering the full year from August 1 to July 31.

If the Taxpayer's Year Ends December 31, returns are to be filed, in order, as follows: (1) Quarterly estimated return covering the period from January 1 to March 31; (2) quarterly estimated return covering the period from April 1 to June 30; (3) quarterly estimated return covering the period from July 1 to September 30; (4) annual return, showing actual figures, covering the period from January 1 to December 31.

NOTE—The filing of fourth quarterly return has been dispensed with.

Respectfully,

GRANT P. HALL,

State Tax Commissioner.

IF THE SPACE ON THIS RETURN IS INSUFFICIENT TO ENTER ALL PROPER ITEMS OR NOTATIONS SEPARATE SHEETS CONTAINING THE NECESSARY INFORMATION SHOULD BE ATTACHED; WHEN SO ATTACHED, THEY BECOME A PART OF THIS RETURN.

L-295
Form 101—B-P Tax. This return is to be forwarded to the STATE TAX COMMISSIONER, BOX 1216, CHARLESTON, W. VA. 6-11 25-85M

STATE OF WEST VIRGINIA—ANNUAL RETURN—BUSINESS-PROFESSION TAX

(1) For Year Ended _____ (2) or Part Year From Jan. 1, 1925 To June 30, 1925.

(3) Business Carried on is Production and Distribution of Natural Gas

(4) Books of Account are Kept at (Post Office) Pittsburgh Pa. (P. O. Box 1756)

(5) Principal Place of Business or Chief Works in W. Va. Clarksburg, W. Va.

(6) Name and Address of Outside Expert (if employed) Preparing Return: _____

THIS RETURN WITH CHECK TO COVER TAXES DUE MUST BE RECEIVED WITHIN 30 DAYS FROM END OF PERIOD COVERED BY THE RETURN.

FOR USE OF BUREAU ONLY	
Date Received	
Serial No.	
From	To
Audited by	
Amount Remitted $	
Total $	
Am't and Date Assessed	

MADE BY — INSERT NAME AND ADDRESS AND INDICATE BY X THE CLASS TO WHICH YOU BELONG

(COPY)

103-26 Hope Natural Gas Company,
A668-32 Box 1756,
Pittsburgh, Pa.

Individual	
Corporation	X
Partnership	
Association	
Profession	

(7) When business begun? 1898

(8) Did you sell or otherwise dispose of your property, or quit business, during period covered by this return? No

(9) If so, when? _____

(10) If business sold, to whom? _____

(11) If a corporation, when incorporated? Sept. 17 1898 ; (12) Under the laws of what state? West Va. ; (13) When business begun? 1898

(14) If a foreign corporation, when admitted to do business in West Virginia? _____ (15) Did the corporation dissolve or quit business during the period covered by this return? No (16) If so, when? _____ (17) Did the corporation change its name during the period covered by this return? No (18) If so, old name _____ (19) New name, _____

(20) The Year Ending _____ Is Designated as the Close of Taxpayer's Year for Tax Report Purposes

COMPUTATION OF TAXES—BUSINESS CONDUCTED IN WEST VIRGINIA

1. Item	2. Gross Amount	3. Exemptions Claimed	4. Taxable Amount	5. Rate	6. Amount of Tax
	Dollars Cts.	Dollars Cts.	Dollars Cts.		Dollars Cts.
A1. Gross value of Minerals produced in West Virginia	$ 5 043 365 07	$ 5 000 00	$ 5 038 365 07	2/5 of 1%	$ 20 153 46
A2. Gross value of Manufactures produced in West Virginia	104 937 71	22 726 53	82 211 18	1/5 of 1%	164 42
B1. Gross Sales of Tangible Property in West Virginia (except by Wholesalers)	864 030 84	5 000 00	859 030 84	1/5 of 1%	1 718 06
B2. Gross Profits of Wholesalers and Jobbers	132 340 78	5 000 00	127 340 78	1/3 of 1%	424 47
C. Gross Income of Banks, Railroads, etc.	None	None	None	1/5 of 1%	None
D. Gross Income of Professions and all other businesses	31 432 23	5 000 00	26 432 23	1/5 of 1%	52 86
E. Total Amount of Taxes due	6 176 106 63	42 726 53	6 133 380 10		$ 22 513 27

*Real estate sales included in amount shown under item B1. $ None

F. PAYMENTS ON ESTIMATED RETURNS AS UNDER:

1.	1st Quarter	$ 15454	56
2.	2nd Quarter		
3.	3rd Quarter		
4.	Tentative Payment on Final Return. (Taxpayers who have been granted an extension of time within which to file final return shall use line 4 to show tentative payment required pending the filing of final return.)	8075	51
5.	Check Enclosed Overpaid	1016	80
6.	Total to Balance E		$ 22 513 27

OATH

I, J. C. Chisler, Asst. Treasurer, do solemnly swear that the statements and items (both as to designations and amounts), entered in the foregoing return and in the supplementary statement and in any additional list or lists attached to or accompanying this return, are, to the best of my knowledge and belief, true and correct in each and every particular; that the figures thereon reported were taken from the original books, papers and records of the taxpayer making return; and that the person signing this return is thoroughly familiar with the business reported in the return and with the original books, papers and records from which the return was prepared.

Sworn to and subscribed before me this 23rd day of September, 1925.

HOPE NATURAL GAS COMPANY
(Name of Taxpayer)

(Seal) G. A. Kinley
Notary Public.

[Seal of Officer Taking Affidavit]

J. C. Chisler, Asst. Treas.
(Official title, if made on behalf of a corporation: president, vice-president, secretary or treasurer, as the case may be.)

My commission expires on the 18th day of January, 1929.

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THIS RETURN IS NOT COMPLETE UNTIL THE SUPPLEMENTARY SCHEDULE OR SCHEDULES CORRESPONDING WITH THE ITEM OR ITEMS ABOVE REPORTED BY THE TAXPAYER ARE FILLED IN

ALL SCHEDULES OF THIS RETURN COVER THE PERIOD FROM Jan. 1, 1925 TO June 30, 1925

SCHEDULE A1. (To be used by Miners and Producers of Coal, Oil, Gas and other Minerals).

This schedule is to be prepared after COMPUTATION OF TAXES, page 1, has been completed by the making of the proper entries in columns 2 to 6 thereof.

	(1) Total Output in Production Units	(2) Average Price per Unit	(3) AMOUNT Dollars	Cts.
(1) Taxable Sales Proceeds as per column 4, page 1	xxxxxxxxxxxxxxxx	xxxxxxxxxx	$ 5 038 365	07
Add exemptions claimed as per column 3, page 1: (2) Specific exemption at rate of $10,000 annually	xxxxxxxxxxxxxxxx	xxxxxxxxxx	5 000	00
(3) Cash discounts, if allowed and deducted on face of invoices, as and when rendered	xxxxxxxxxxxxxxxx	xxxxxxxxxx		
(4) Total output, average price and gross sales proceeds as shown by taxpayer's records (enter 1, 2, 3, the amount in column 3 to be the sum of items 1, 2 and 3 above)	Gas Produced and Sold 14,879,721 M Cu. Ft. / Oil 151.74 Bbls.	.3389 / 4.01	5 043 365	07
(5) Freight charges included in Sales Proceeds	xxxxxxxxxxxxxxxx	xxxxxxxxxx		
(6) Total Gross Sales Proceeds (amounts invoiced) as per column 2, page 1	xxxxxxxxxxxxxxxx	xxxxxxxxxx	5 043 365	07

(7) State units used, long or short ton, cubic foot, etc. Gas—M. Cu. Ft. Oil—Barrels

(8) State highest and lowest prices obtained during period Oil—4.01 all sales Gas—Same as above.

Note—Average price to be based on prices f. o. b. without deduction for selling or other expense, commissions paid agents out of selling price, losses on account of bad debts or other causes.

Note—Report Commissary Sales under Sch. B-1; rentals, etc., under Sch. D.

SCHEDULE A2. (To be used by Manufacturer Compounders and Persons Preparing Articles for Sale.)

This schedule is to be prepared after COMPUTATION OF TAXES, page 1, has been completed by the making of the proper entries in columns 2 to 6 thereof.

	(1) Total Output in Production Units	(2) Average Price per Unit	(3) Amount Dollars	Cts.
(1) Taxable Sales Proceeds as per column 4, page 1	xxxxxxxxxxxxxxxx	xxxxxxxxxx	$ 82 211	18
Add exemptions claimed as per column 3, page 1: (2) Specific exemption at rate of $10,000 annually	xxxxxxxxxxxxxxxx	xxxxxxxxxx	5 000	00
(3) Cash discounts, if allowed and deducted on face of invoices as and when rendered	xxxxxxxxxxxxxxxx	xxxxxxxxxx		
(4) Trade discounts, if allowed and deducted on face of invoices	xxxxxxxxxxxxxxxx	xxxxxxxxxx		
(5) Total output, average price and gross sales proceeds, as shown by records of taxpayer (enter 1, 2, 3, the amount in column 3 to be the sum of items 1, 2, 3 and 4 above)	Gasoline 718,971 Gals.	.1213	87 211	18
(6) Freight charges included in Taxpayer's invoices to customers	xxxxxxxxxxxxxxxx	xxxxxxxxxx	17 726	53
(7) Total Gross Sales Proceeds, as shown by invoices, as per column 2, page 1	xxxxxxxxxxxxxxxx	xxxxxxxxxx	104 937	71

(8) What production unit is used? Gallons

(9) If units are not uniform, show production and average price per unit, based on standard production units, if used

(10) State highest and lowest price per standard unit obtained High 26c—Low .1147½c—Less freight on both

Note—Average price to be based on prices f. o. b. factory without deduction for commissions or other expense, or losses on account of bad debts or other causes.

SCHEDULE B1. (To be used by all Persons Selling Tangible Property, other than Wholesalers and Jobbers.)

This schedule is to be prepared after COMPUTATION OF TAXES, page 1, has been completed by the making of the proper entries in columns 2 to 6 thereof.

	Amount Dollars	Cts.
(1) Taxable Sales Proceeds as per column 4, page 1	$ 859 030	84
Add exemptions claimed as per column 3, page 1: (2) Specific exemption at rate of $10,000 annually	5 000	00
(3) Cash discounts, if allowed and deducted on face of invoices as and when rendered	None	
(4) Freight charges included in taxpayer's invoices to customers	None	
(5) Trade discounts if allowed and deducted on face of invoices	None	
*(6) Proceeds of shipments to out-of-state points, in continuous transit	None	
*(7) Proceeds of shipments of goods imported into West Virginia direct to customers	None	
(8) Total Sales Proceeds as shown by Taxpayer's Invoices, as per column 2, page 1 Sold in W. Va.	864 030	84

Note—Sales of every description, whether made in business or not, whether made at a profit or at a loss, sales of real estate, personal property—such as sales of household goods—are all to be reported under Schedule B-1.

*Monthly totals so arranged as to correspond with taxpayer's records are to be attached as separate exhibits.

Form B-2 (a).

THIS FORM TO BE USED BY WHOLESALERS AND JOBBERS IS TO SHOW TOTAL GROSS PROFITS ON ALL SALES AT WHOLESALE, BOTH TAXABLE AND EXEMPT,--TO BE ATTACHED TO AND MADE A PART OF THE ANNUAL RETURN

Report of HOPE NATURAL GAS COMPANY

Covering the period from January 1, 1925 **to** June 30, 1925

Gas Purchased & Resold Wholesale.	Column 1 Dollars	Column 1 Cts.	Column 2 Dollars	Column 2 Cts.	Column 3 Dollars	Column 3 Cts.
(1) GROSS SALES. (Enter column 2)	xxxx	xxxx	4 601 119	47	xxxx	xxxx
(2) DEDUCTIONS FROM (1) AS UNDER: (a) Merchandise Returned. (Enter column 1)			xxxx	xxxx	xxxx	xxxx
(b) Empty Packages Returned. (Enter column 1)			xxxx	xxxx	xxxx	xxxx
(c) Freight Included in (1). (Enter column 1)			xxxx	xxxx	xxxx	xxxx
(d) Wholesale to out of State Points	4 291 378	76	xxxx	xxxx	xxxx	xxxx
TOTAL DEDUCTIONS. (Enter column 2)	xxxx	xxxx	4 291 378	76	xxxx	xxxx
(3) NET SALES. (Enter column 3)	xxxx	xxxx	xxxx	xxxx	309 740	71
(4) DEDUCT COST OF SALES. (See below) (Enter col. 3)	xxxx	xxxx	xxxx	xxxx	177 399	93
(5) GROSS PROFITS. (Enter column 3)	xxxx	xxxx	xxxx	xxxx	132 340	78

COST OF SALES—ITEM (4) ABOVE

(1) INVENTORY AT BEGINNING OF YEAR. (Enter column 2)	xxxx	xxxx			xxxx	xxxx
(2) ADD PURCHASES AS UNDER: (a) Purchases at cost. (Enter column 1)	2 409 683	50	xxxx	xxxx	xxxx	xxxx
(b) Inward Freight. (Enter column 1)			xxxx	xxxx	xxxx	xxxx
(3) TOTAL PURCHASES. (a) plus (b). (Enter column 2)	xxxx	xxxx	2 409 683	50	xxxx	xxxx
(4) TOTAL of (1) and (3). (Enter column 2)	xxxx	xxxx	2 409 683	50	xxxx	xxxx
(5) LESS: (c) Merchandise Returned. (Enter column 1)			xxxx	xxxx	xxxx	xxxx
(d) Empties Returned. (Enter column 1)			xxxx	xxxx	xxxx	xxxx
(e) Wholesale to out of State Points	2 232 283	57	xxxx	xxxx	xxxx	xxxx
(6) TOTAL DEDUCTIONS. (Enter column 2)	xxxx	xxxx	2 232 283	57	xxxx	xxxx
(7) DEDUCT (6) from (4). (Enter column 2)	xxxx	xxxx	177 399	93	xxxx	xxxx
(8) INVENTORY AT END OF YEAR. (Enter column 2)	xxxx	xxxx			xxxx	xxxx
(9) COST OF SALES—(7) less (8). (Enter column 3)	xxxx	xxxx	xxxx	xxxx	177 399	93

Note—If discounts are deducted from Sales, they must also be deducted from Purchases. Discounts to be deductible items from Sales must be "allowed and deducted on the face of the invoice by the seller," as and when rendered.

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ALL SCHEDULES OF THIS RETURN COVER THE PERIOD FROM Jan. 1, 192 TO June 30, 1925.

SCHEDULE B2. (Sales of Tangible Property by Wholesalers and Jobbers.) **This schedule is to be prepared after COMPUTATION OF TAXES, page 1, has been completed by the making of the proper entries in columns 2 to 6 thereof.**	(1) Gross Sales	(2) Gross Profits
(1a) Gross Sales exclusive of exempted shipments—items 3 and 4 below (enter 1) (1b) Taxable Amount (Gross Profits) as per column 4, page 1 (enter 2)	$ 309,740 71	$ 127,340 78
Add exemptions claimed as per column 3, page 1:		
(2) Specific exemption at rate of $10,000 annually (enter 2)	xxxxxxxxxxxxxxx xxxxxx	5,000 00
*(3) Proceeds of and Gross Profits on shipments to out-of-state points, in continuous transit (enter 1 and 2)	4,291,378 76	2,059,095 19
*(4) Proceeds of and Gross Profits on shipments imported into West Virginia direct to customers (enter 1 and 2)	4,601,119 47	2,191,435 97
(5) Total Sales Proceeds and Gross Profits, as shown by Taxpayer's records, as per column 2, page 1 (enter 1 and 2)		

Note—Wholesalers and Jobbers are to show method of arriving at gross profits on sheet B-2 (A) which, if not enclosed, will be furnished on application.
*Monthly totals so arranged as to correspond with taxpayer's records are to be attached as separate exhibits.

SCHEDULE C. (Gross Receipts of Banks, Railroad, Telephone and Telegraph Companies, Oil Pipe Line, Water, Navigation or Express Companies.) **This schedule is to be prepared after COMPUTATION OF TAXES, page 1, has been completed by the making of the proper entries in columns 2 to 6 thereof.**	Amount
(1) Taxable Gross Receipts as per column 4, page 1	$
Add exemptions claimed, as per column 3, page 1:	
(2) Specific exemption at rate of $10,000 annually	
(3) Cash discounts if allowed and deducted on face of invoices as and when rendered	
(4) Receipts from interstate business	None
(5) Total Receipts as shown by Taxpayer's records, as per column 2, page 1	

SCHEDULE D. (Gross Receipts of All Persons Engaged in Business or Practising Professions—Not Reported Under Preceding Schedules.) **This schedule is to be prepared after COMPUTATION OF TAXES, page 1, has been completed by the making of the proper entries in columns 2 to 6 thereof.**	Amount
(1) Taxable amount as per column 4, page 1	$ 26,432 23
Add exemptions claimed as per column 3, page 1:	5,000 00
(2) Specific exemption at rate of $10,000 annually	
(3) Cash discounts if allowed and deducted on face of invoices as and when rendered	31,432 23
(4) Total Receipts, as shown by records of Taxpayer, as per column 2, page 1	

Note—Under Schedule D should be reported by taxpayers whose main activities fall under a preceding schedule, such items as receipts from rentals, interest, commissions. Taxpayers whose main activities fall under Schedule D comprise professional men, businesses not handling tangible property but consisting of sales of services, such as agencies, brokerage business, home insurance companies, investment companies, etc.

The following businesses and professions are among those that are to report under Item D:

Accountants (Certified Public)
Auditors (Public)
Adjusters
Advertising Service
Amusement Companies
Apartments (Renters of)
Architects
Auto Hiring
Automobile Repairing
Automobile Emergency Service
Baggage Transfer Companies
Barbers
Billiard Parlors
Blue Print Companies
Bonding Companies' Agents
Bridge Building Contractors
Brokers (Merchandise)
Brokers (Miscellaneous)
Brokers (Stocks and Bonds)
Cemeteries
Chiropodists
Chiropractors
Cleaning & Dyeing
Chemical Analysts
Coal Agencies
Cold Storage
Collections
Commercial Photographers
Contractors
Court Reporters
Dentists
Detective Agencies
Distributing Agencies
Dressmakers
Dyers, Cleaners and Repairers
Electrical Contractors
Engineering Service
Employment Agencies
Engineers (Civil)
Engineers (Consulting)
Engineers (Electrical)
Engineers (Mining)
Engineers (Mechanical)
Engineers (Structural)
Garages
Geologists
Holding Companies
Hospitals and Dispensaries
Hotels
Income Tax Experts
Insurance Agencies
Investment Companies
Laboratories
Laundries
Lawyers
Leasing Lands and Buildings
Livery Stables
Loan Companies
Mercantile Agencies
Motion Pictures & other Theatres
Osteopathists
Optometrists
Opticians
Photographers
Physicians and Surgeons
Real Estate Agents
Sanitariums
Shoe Repairing
Shorthand Reporters
Taxicabs
Tire Repairing
Veterinarians
Window, Office and House Cleaning

Instructions As To Annual Returns

WHO SHALL MAKE ANNUAL RETURNS UNDER THE BUSINESS-PROFESSION TAX LAW

(1) All corporations and associations organized and existing under the laws of the State of West Virginia.
(2) All foreign corporations admitted to do business in the State of West Virginia.
(3) All persons, firms and co-partnerships engaged in business in the State of West Virginia.
(4) All persons, firms and co-partnerships engaged in professional practice in the State of West Virginia.
(5) All individuals, who, during any "tax year" sell any tangible property whatsoever, real or personal (not including, however, bonds or other evidence of indebtedness, or stocks), the sales value of which exceeds ten thousand ($10,000.00) dollars. The term "tax year" means either the calendar year, or the State fiscal year ending June 30th.

Note—Corporations, foreign and domestic, persons, firms, co-partnerships and associations engaged in business are required under revised Rules and Regulations to make returns regardless of whether their gross sales proceeds, gross income or gross profits amount to over $10,000.00 or not, or, in the case of corporations, whether or not any or all of the business is conducted outside of West Virginia.

CONCERNING THE SPECIFIC EXEMPTION

The Act provides a specific exemption of $10,000.00 from the aggregate gross value of all mineral products produced in the State of West Virginia by the taxpayer (Item A1); $10,000.00 from the aggregate gross value of all articles, substances or commodities manufactured, compounded or prepared for sale in the State of West Virginia by the taxpayer (Item A2); $10,000.00 from the aggregate gross proceeds from sales of tangible property, real or personal, sold in West Virginia by the taxpayer (Item B1); $10,000.00 from gross profits from business conducted in West Virginia by wholesalers and jobbers (Item B2); $10,000.00 from the aggregate gross income derived from the conduct by the taxpayer in the State of West Virginia of one or more of the businesses named in paragraph (c), section two of the Act (Item C); and $10,000.00 from the aggregate gross income derived from all other businesses not otherwise reported, and from professional activities, in West Virginia by the taxpayer (Item D).

The above exemption is allowable from the gross value, gross sales, gross profits or gross income, as the case may be, derived from a full year's business. If the return covers a period of less than a year, the taxpayer is entitled to an exemption of that part of the sum of $10,000.00 which bears the same relation to $10,000.00 as the period of time during which he is engaged in business bears to a full year,—in other words, the exemption is $833.33 for each month covered by the return.

CONCERNING MANNER OF PREPARATION OF ANNUAL RETURN

The annual return must show the actual amount of gross value, gross sales, gross profits or gross income, as the case may be. The amount reported must be derived from the records of the taxpayer, subject to verification, if deemed necessary by the State Tax Commissioner.

The word "taxpayer," as used below, means any individual, association or corporation liable for any tax under the business-profession tax act.

ITEM A1. Each taxpayer engaging or continuing within West Virginia in the business of mining or producing for sale, or for profit, any coal, oil, natural gas, limestone, sand, or other mineral product, shall show in item A1 the actual aggregate value (gross proceeds of sales) of all minerals produced in West Virginia by such taxpayer during the period covered by the return.

ITEM A2. Each taxpayer engaging or continuing within West Virginia in the business of manufacturing, compounding or preparing for sale any article or articles, substance or substances, commodity or commodities, shall show in Item A2 the actual aggregate value (gross proceeds of sales) of all articles substances or commodities manufactured, compounded or prepared in West Virginia by such taxpayer for sale, during the period covered by the return.

ITEM B1. Each taxpayer selling any property, real or personal (except wholesalers and jobbers selling at wholesale), shall show in Item B1 the actual aggregate gross proceeds from sales of all such property sold by such taxpayer in West Virginia during the period covered by the return. Retail mercantile sales, real estate sales, sales by farmers, cattle dealers, produce dealers, etc., sales of capital assets (except bonds, or other evidences of indebtedness, or stocks), and all other sales of tangible property, real or personal, shall be reported under this item.

ITEM B2. Each taxpayer engaging or continuing within West Virginia in the business of selling merchandise at wholesale, in the wholesale or jobbing trade (as defined in the Rules and Regulations pertaining to the Business-Profession Tax issued by the tax commissioner) shall show in Item B2 the actual gross profits derived from all such businesses conducted by such taxpayer in West Virginia during the period covered by the return.

ITEM C. Each taxpayer engaging or continuing within West Virginia in the business of conducting a bank, banking institution, or trust company, or operating a railroad, street railroad, or a telephone, telegraph, oil pipe line, water, navigation, or express company, shall show in Item C the actual aggregate gross receipts derived by such taxpayer from all such businesses conducted in West Virginia.

ITEM D. Each taxpayer engaging or continuing within West Virginia in any profession, or in any business not included in previous headings, shall show in Item D the actual aggregate gross receipts derived from all professional or business activities engaged in by such taxpayer in the State of West Virginia during the period covered by the return. Under this item shall be reported all gross income derived from any profession (such as legal, medical, etc.), or from any business not shown in previous schedules (such as insurance agents or agencies, loan brokers, loan associations, hotels and rooming houses, commission merchants, brokers, etc.) and the taxpayer's pro rata share of the gross income, taxable under item D, of any partnership or association reporting under Sections (a), (b) or (c) of the Act.

WHEN ANNUAL RETURN IS TO BE FILED. Annual return must be filed with the tax commissioner within thirty days from the close of each tax year. Each return is to be accompanied by check for the amount of tax shown by the return to be due the State.

If the Taxpayer's Year Ends June 30th, returns are to be filed, in order, as follows: (1) Quarterly estimated return covering July 1 to September 30; (2) quarterly estimated return covering October 1 to December 31; (3) quarterly estimated return covering January 1 to March 31; and (4) annual return showing actual figures covering the full year from July 1 to June 30.

If the Taxpayer's Year Ends July 31, returns are to be filed as follows: (1) Quarterly estimated return covering August 1 to October 31; (2) quarterly estimated return covering November 1 to January 31; (3) quarterly estimated return covering February 1 to April 30; and (4) annual return showing actual figures covering the full year from August 1 to July 31.

If the Taxpayer's Year Ends December 31, returns are to be filed, in order, as follows: (1) Quarterly estimated return covering the period from January 1 to March 31; (2) quarterly estimated return covering the period from April 1 to June 30; (3) quarterly estimated return covering the period from July 1 to September 30; (4) annual return, showing actual figures, covering the period from January 1 to December 31.

NOTE—The filing of fourth quarterly return has been dispensed with.

Respectfully,

GRANT P. HALL,

State Tax Commissioner.

IF THE SPACE ON THIS RETURN IS INSUFFICIENT TO ENTER ALL PROPER ITEMS OR NOTATIONS SEPARATE SHEETS CONTAINING THE NECESSARY INFORMATION SHOULD BE ATTACHED; WHEN SO ATTACHED, THEY BECOME A PART OF THIS RETURN.

12. "Schedule of Gas Purchase Contracts, First Class and Second Class."
13. "Schedule Pittsburgh & West Virginia Gas Company Contracts."
14. "Schedule United Fuel Gas Company Contracts."
15. "Schedule Manufacturers Light & Heat Company Contracts."
16. "Distribution of Plaintiff's Gas Sales."
17. "Steptoe Law."
18. Decrees in Original Jurisdiction Causes."
19. "Pipe Line Privilege Tax Return, Rules and Regulations and Law."
20. "Eureka Decree."
21. "Opinion by Mr. Justice Holmes."
22. "Opinion by Mr. Chief Justice Taft."
23. "Eureka Mandates Affirming Final Decree."
24. "United Fuel Decree."
[fol. 388] 25. "Opinion by Mr. Justice Holmes in Gas Case."
26. "Opinion by Mr. Chief Justice Taft in Gas Case."
27. "United Fuel Mandates Affirming Final Decree."
28. "Act of 1921."
29. "Return 1921."
30. "Return 1922."
31. "Return 1923."
32. "Return 1924."
33. "Return 1925."

End of Part II (pages 95 to 388, inclusive).

Wm. B. Mathews, Clerk.

[fols. 388a & 389] Part III

In Court of Common Pleas of West Virginia

Final Decree—May 10, 1926

This cause having been submitted to the Court for final consideration, decision and decree, and the Court having taken time to consider thereof, and now being advised of its decree herein, is of opinion to and doth find for the

plaintiff to the extent hereinafter decreed, for reasons set forth in a written opinion prepared by the Court and now filed herein and made part of the record hereof, marked for identification "Memorandum by the Court—Owen, Judge."

And the Court being of opinion that the said Act of the Legislature of West Virginia, chapter one (Senate Bill No. 1), enacted at an extraordinary session of said Legislature in the year 1925, particularly mentioned in the pleadings and record herein, as to section 2-a of said Act, in so far as it purports to impose a tax on the business of mining and producing for sale, profit or use natural gas, is in every respect null and void as to the plaintiff, its property, franchises and business, and that so much of the said section 2-a as applies to the business of mining and producing natural gas is not divisible or severable; and the Court is further of opinion that the plaintiff is not subject to a sales tax under section 2-c of said Act or to a public service company tax under section 2-d of said Act as to the natural gas produced by the plaintiff in the State of West [fol. 390] Virginia; and the Court is further of opinion that the plaintiff as to all natural gas purchased by and delivered to it in the State of West Virginia, and transported, sold and delivered by it in interstate commerce, as shown by the record herein, is not subject to a tax under any of the provisions of said Act; and that the plaintiff is entitled to the relief prayed for by it in accordance with the aforesaid findings of the Court;

It is therefore adjudged, ordered and decreed that the plaintiff be and it is hereby granted the relief prayed for by it to the extent of the aforesaid findings of the Court herein, and that the defendant Grant P. Hall, State Tax Commissioner of the State of West Virginia, and all persons acting under his authority or direction, and the defendant Howard B. Lee, Attorney General of the State of West Virginia, and all persons acting under his authority, advice or direction, be and they are perpetually inhibited, enjoined and restrained from enforcing or attempting to enforce in any manner the said Act or any of the provisions thereof as to the natural gas mined and produced by the plaintiff within the State of West Virginia, and as to any natural gas purchased by and

delivered to the plaintiff within the State of West Virginia and transported, sold and delivered by it in interstate commerce, as against the plaintiff or its property, and from requiring it to make any return or report to said State Tax Commissioner in respect thereto, and from assessing upon its property or against it, and from collect-
[fol. 391] ing or proceeding to collect from it in any way any tax upon or against the natural gas mined and produced by the plaintiff within the State or purchased within the State and transported, sold and delivered in interstate commerce as aforesaid, and from collecting or proceeding to collect any penalties or fines prescribed by the said Tax Act, and from instituting any prosecutions thereunder in respect to the same, insofar as said Act is hereinabove decreed to be invalid and void. It is further adjudged, ordered and decreed that all other and further relief prayed for by the bill of complaint be and the same is hereby denied; but no fines or penalties shall be imposed because of the failure of the plaintiff heretofore to make return or pay any tax properly chargeable against it under the provisions of said act herein held valid.

The defendants here moved the Court to deny the injunction, so far as the same is hereby granted, upon the ground that the plaintiff has not paid or tendered the amount of any taxes which may be due from it under Section 2-d of the said Tax Act, and further moved the Court to make the awarding of said injunction conditional upon the payment of such taxes, which motions were resisted by the plaintiff, and upon consideration thereof, the Court doth overrule the same.

The defendants indicating their desire to apply to the Circuit Court of Kanawha County for an appeal from this decree, upon their motion the effect hereof is suspended for the period of sixty days to enable them to do so, without being required to give a suspending bond.

[fol. 392] (Endorsed:) Enter: Morgan Owen, Judge. Entered in Chancery Order Book May 10, 1926. No. 6, Page 364.

[fol. 393] In Court of Common Pleas of Kanawha County

[Title omitted]

Memorandum Opinion—May 10, 1926

Owen, Judge:

The plaintiff, Hope Natural Gas Company, a West Virginia corporation, seeks by its Bill filed in this cause to prevent the enforcement against it by the defendants, the provisions of a statute of West Virginia enacted by the Legislature at its first extraordinary session 1925, entitled:

"An act to provide for the raising of additional public revenue by a tax upon the privilege of engaging in certain occupations; to provide for the ascertainment, assessment, and collection of such tax; to provide penalties for violations of the terms hereof; and to repeal certain statutes."

Said act, so far as its provisions are pertinent to an examination of the questions here raised, reads as follows:

[fol. 394] "Sec. 2-a. Upon every person engaging or continuing within this state in the business of mining and producing for sale, profit, or use, any coal, oil, natural gas, limestone, sand or other mineral product, or felling and producing timber for sale, profit, or use, the amounts of such tax to be equal to the value of the articles produced as shown by the gross proceeds derived from the sale thereof by the producer (except as hereinafter provided), multiplied by the respective rates, as follows, coal, forty-two one hundredths of one per cent; oil, one per cent; natural gas, one and seventeen-twentieths of one per cent; limestone, sand or other mineral product, nine-twentieths of one per cent; timber, nine-twentieths of one per cent. The measure of this tax is the value of the entire production in this state, regardless of the place of sale or the fact that deliveries may be made to points outside the state.

"Sec. 2-c. Upon every person engaging or continuing within this state in the business of selling any tangible property whatsoever, real or personal, (not including, however, bonds or other evidence of indebtedness, or stocks), there is likewise hereby levied, and shall be collected, a tax

equivalent to two-tenths of one per cent of the gross income of the business; provided, however, that in the case of a wholesaler or jobber, the tax shall be equal to one-twentieth of one per cent of the gross income of the business. The classification of wholesaler or jobber shall be used only by any person doing a regularly organized jobbing business, known to the trade as such, and having regularly in his exclusive employment one or more traveling salemen.

"Sec. 2-h. In computing the amount of tax levied hereunder, however, for any year, there shall be deducted from the values, or from the gross income of the business, as the case may be, an exemption of ten thousand dollars of the amount of such values or gross income. Every person exercising any privilege taxable hereunder for any fractional part of a tax year shall be entitled to an exemption [fol. 395] of that part of the sum of ten thousand dollars which bears the same proportion of the total sum that the period of time during which such person is engaged in such business bears to a whole year."

The bill alleges that the defendant, the State Tax Commissioner, acting under authority of said act, has prescribed forms for returns and assessments thereunder, and has promulgated and attempted to put in force certain rules and regulations deemed necessary by him to ascertain and assess the said taxes, a printed copy of which rules and regulations, with a complete copy of said tax act, and of the rules and regulations, together with printed copies of said forms for making returns, are shown in the Stipulation of Facts entered into between the plaintiff and the defendants herein in lieu of the formal taking of evidence. The plaintiff has refused to comply with said rules and regulations, and to make such return.

The bill, as grounds for the injunction sought herein, asserts that said act is unconstitutional, illegal, and void, and its necessary operation and effect violates the rights of the plaintiff upon two principal grounds.

First: Under Article 1, Section 8, of the Constitution of the United States of America, in that it imposes directly and immediately a burden upon and hampers and restricts interstate commerce; also in violation of the Fourteenth

Amendment of the Constitution of the United States, in that its enforcement will deprive plaintiff of its property [fol. 396] without due process of law, and to deny it equal protection of the laws; and,

Second: Under the Constitution of the State of West Virginia, in that said tax act directly violates Section 1 of Article 10, which prescribes that all taxation shall be equal and uniform throughout the state, and that the taxation of privileges and franchises of persons and corporations shall be by uniform and equal laws.

The defendant by its answer avers that the act of the legislature in question is a valid law of the state, and that the plaintiff is within the terms thereof and subject to the privilege tax thereby imposed. It denies that the act is unconstitutional, illegal, invalid, and void.

The plaintiff is a West Virginia corporation engaged in the producing, purchasing, selling, transporting, and marketing natural gas; and for the year ending June 30, 1925, it was the owner of 3,178 producing gas wells, and of 860,750 acres of oil and gas leases operated and unoperated, situate in twenty-five counties of the State of West Virginia. It not only produces natural gas from its own leases, but it also is the largest purchaser in the state of natural gas produced by others. For the year ending June 30, 1925, it produced and purchased in the state 48,651,658,000 cubic feet of natural gas, not taking into account the free gas delivered to its lessors usually at the respective wells, or gas used by it in its operations, all of which aggregate approximately 2,000,000,000 cubic feet. Of the 48,651,658,000 cubic feet of natural gas so produced and purchased, 25,456,947,000 cubic feet was purchased by the plaintiff from other producers, and 23,194,711,000 cubic feet was produced by the plaintiff, showing that it purchased approximately 2,000,000,000 cubic feet more than it [fol. 397] produced. That in order to transport this gas to market, the plaintiff has built a transportation system which is used exclusively for that purpose, this system being composed of compressing stations and a net-work of lines of steel pipe varying in diameter from 2 to 20 inches, and having a mileage of 1,292 miles of pipe 8 *qo* 20 inches in diameter, and several thousand miles of pipe 2 to 6 inches

in diameter, all of which is in the State of West Virginia. That more than 80 per cent of this gas was marketed out of the State of West Virginia, and was transported by means of these pipe lines in continuous and uninterrupted transit from the places of its production and purchase to the state lines, and into the states of Ohio and Pennsylvania, and so delievered to the various companies as set out in the Stipulations hereinbefore mentioned. A description and method of the operation of the plaintiff's gas transportation system is set out in detail in said Stipulations. The Stipulations set out the nature and amounts of the various property taxes, license taxes, and excise taxes, which the plaintiff is required by the laws of the state to pay in addition to the privilege tax herein sought to be enjoined; and the plaintiff insists that the tax in question while purporting on its face to be a privilege tax for the right to continue its business in this state of producing, purchasing, and transporting natural gas, is in fact and in effect a tax upon the gross proceeds derived from the sale of said gas, more than 80 per cent of which is transported in interstate commerce.

The cause came on for hearing on the bill, the answer, exhibits, and stipulations of facts; and the points of law, as well as of facts, have been extensively argued by able counsel on both sides, and briefs for each side have been filed.

[fol. 398] The court in approaching its decision in this case is not unmindful of the rule of law that a statute will never be construed so as to make it conflict with any constitutional provision if the terms used by the legislature are susceptible of a meaning and reconcilable to a view that is consistent with the organic law; but in the instant case, the court feels that the decisions of the Supreme Court of the United States are controlling, and especially so when the question is whether the statute contravenes the provisions of the Constitution of the United States; and upon an examination of the decisions of the Supreme Court of the United States, it finds that if there is one rule of law emphasized more than any other in construing statutes of the kind in question, it is, that their validity under the commerce clause depends almost exclusively upon their prac-

tical operation and effect on interstate commerce, and that the court will look through form to substance in determining what the practical effect is; and that if the tax in its practical operation and effect amounts to a burden upon or an interference with interstate commerce, it will be declared invalid. This is also true of the decision of the Supreme Court of West Virginia.

In the case of Western Union Tel. Co. v. Kansas, 216 U. S., 1 (1910), Justice Harlan says:

"But the disavowal by the state of any purpose to burden interstate commerce cannot conclude the question as to the fact of such burden being imposed, or as to the unconstitutionality of the statute as shown by its necessary operation upon interstate commerce. If the statute, reasonably interpreted, either directly or by its necessary operation, burdens interstate commerce, it must be adjudged to be invalid, whatever may have been the purpose for which it was enacted, and although the company may do both interstate and local business. This court has repeatedly adjudged that in all such matters the judiciary will not regard mere form, but will look through forms to [fol. 399] the substance of things."

Justice Holmes, in the case of Galveston H. & S. A. Ry. Co. v. Texas, reported in 210 U. S., 217, says:

"We are to look for a practical rather than a logical or philosophical distinction. A practical line can be drawn by taking the whole scheme of taxation into account. This must be done by this court as best it may.

"Neither the state courts nor the legislature by giving the tax a particular name, or by the use of some form of words, can take away our duty to consider its nature and effect. If it bears upon commerce among the states so directly as to amount to a regulation in a relatively immediate way, it will not be saved by name or form."

In the case of American Manufacturing Co. v. St. Louis, 250 U. S., 463, Mr. Justice Pitney says:

"But as has been held very often the question whether a state law or tax imposed thereunder deprives a party of rights secured by a Federal constitution, depends not upon

the form of the act, nor on how it is construed or characterized by state courts, but upon its practical operation and effect."

In the case of Pipeline Co. v. Hallanan, 87 W. Va., 409, Judge Ritz says:

"The courts do not look at the form which may be adopted to accomplish a particular purpose, but where it appears that the necessary effect of the procedure contended for is to produce a result which necessarily imposes a burden beyond the power of the legislature, the form will be disregarded."

Railroad Co. v. Teniston, 18 Wal. 5, (1873).
Philadelphia & Southern Mail S. S. Co. v. Pennsylvania, 122 U. S. 326, (1887).
Shaffer v. Carter, 252 U. S. 326.
Standard Oil Co. v. Graves, 249 U. S. 389.
Postal Telegraph Cable Co. v. Adams, 155 U. S. 688.
[fol. 400] Dawson v. Kentucky Distilleries and Warehouse Co., 255 U. S. 288.
St. Louis &c. R. Co. v. Arkansas, 235 U. S. 350-362.
Kansas City &c. R. Co. v. Botkin, 240 U. S., 227-231.
Mountain Timber Co. v. Washington, 243 U. S., 219-237.

In the light of the above decisions of the Supreme Court of the United States and the Supreme Court of Appeals of West Virginia, this court deems it necessary to first determine whether the tax levied under Section 2-a of the Act when tested by its practical operation and effect interferes with or burdens interstate commerce.

The act, by its terms, says, "It is a tax upon the privilege of engaging in certain occupations." The defendant, Grant P. Hall, the tax commissioner, whose duty it is to administer the act, designates it on the form prescribed by him for the returns to be made thereon, "The Gross Sales License Tax," and the plaintiff insists that it is a tax on gross receipts or proceeds.

It will be noted that this tax is in addition to all other taxes, so that it cannot be confused with either of the taxes paid by the plaintiff, as set out on page 12 of the Stipulations filed herein.

That the act is designed to reach the gross receipts of the plaintiff derived from the production, transportation, and selling of its gas in intrastate, as well as interstate commerce seems plain from the very terms of Section 2-a. And it is conceded by counsel for defendants in their argument, that the state, under Section 2-a, will exact one and eighty-five hundredths cents out of every dollar derived by the [fol. 401] plaintiff out of its business of producing, transporting and selling natural gas both in intrastate and interstate commerce subject to the ten thousand dollar exemption.

The state admits that the value of the production is augmented or enhanced by reason of the transportation system of the plaintiff. The Stipulations show the average price of the gas at the mouth of the well and before it enters into the pipeline is 17 cents per thousand cubic feet, and that the average price of the same at the state line where it is delivered under contracts of long standing, as shown in the Stipulations, to other companies for delivery in other states, is more than 36 cents per thousand cubic feet, out of which 36 cents the state insists it is entitled to receive one and eighty-five hundredths per cent.

The amount of such tax depends upon and fluctuates according to the volume of the gas produced, transported, and sold by the plaintiff in interstate commerce; and is unlike the case of Kansas City F. & S. and M. R. Co. v. Botkin, 240 U. S., 227, in which Justice Hughes, speaking of the privilege tax imposed in that case, says:

"In the present case the tax is not laid upon transactions in interstate commerce or upon receipts from interstate commerce either separately or intermingled with other receipts; it does not fluctuate with the volume of interstate business, and its maximum charge is twenty-five hundred dollars. We find no ground for saying that a tax of this character thus limited is in any sense a tax upon interstate commerce."

[fol. 402] So, it is obvious that this tax does in reality take toll from interstate commerce; and that brings us to the question which, stated succinctly, is whether a state in levying an occupation tax can measure the amount thereof by a certain percentage of the gross receipts, and in the

computation include gross receipts derived from interstate commerce without contravening the commerce clause of the Constitution of the United States. It is indisputable that gross receipts from interstate commerce are not taxable directly as such.

Fargo v. Michigan, 121 U. S. 230; Philadelphia S. Mail S. S. Co. v. Penna., 122 U. S. 326.

The result of a tax on an occupation or privilege, the amount of which is measured by a certain percentage of the gross receipts, including those received from interstate commerce, and a tax levied directly on gross receipts derived from interstate commerce is identical, and such a tax has the same potentialities of evil as one laid directly on the gross receipts, and is not justified because the tax is by the act called a privilege or occupation tax. To the one who pays, it is a tax on gross receipts—call it what you will.

The act on its face manifests a purpose to exact one and eighty-five one hundredths per cent from the gross receipts of the plaintiff derived from interstate commerce, and it is contended by counsel for the state that it has the right to such exaction under its provisions, but the reasoning sought to justify the adoption of the measure of the tax sought to be applied in this case is, in the language of Judge Ritz, in the case of Pipeline Co. v. Hallanan, 87 W. Va., 409, "so-[fol. 403] phistical, and amounts to simply a confusion of terms," the result being exactly the same as if the tax had been laid directly upon the gross receipts from interstate commerce. To sustain a tax imposed upon a local occupation, but measured by receipts from all sources, including interstate commerce, something more is necessary than the mere declaration of the state that it is merely using the gross receipts as a measure of the tax. Courts now demand something more substantial.

Justice Pitney, in the case of Crew-Levick Co. v. Pennsylvania, 245 U. S. 292, says:

"That portion of the tax which is measured by receipts from foreign commerce necessarily bears in proportion to the volume of that commerce, and hence is a direct burden upon it."

That the above applies palpably to any occupation tax measured in whole or in part by a percentage of the gross receipts derived from interstate commerce, can hardly be gainsaid.

Under the terms of this act and the rules and regulations of the tax commissioner, the sale price of the gas is conclusive of the value of it, regardless of the cost of transportation, which necessarily enhances its value, and regardless of any other factor which might enhance its value; so it is patent that the legislature intended to reach the gross receipts of the plaintiff derived from interstate commerce.

The Public Service Commission of West Virginia, in fixing the rates which the plaintiff shall receive for the gas which it produces and sells in intrastate commerce, recognized the fact that transportation and distribution enhances [fol. 404] the value of the gas after it is produced, as shown by the rate it allowed the plaintiff to charge consumers in the City of Weston, West Virginia, which rate was 50 cents per thousand cubic feet. (See pages 55-6 of Stipulations.")

It cannot be doubted that the tax in question is increased by an increase in the volume of interstate commerce; and the economic result of this increase of taxation depends upon an increase of interstate commerce, and increases pro tanto the cost of conducting interstate commerce, and this is precisely the kind of burden which the states are forbidden to impose directly, and which the Pipeline Co. v. Hallanan case, supra, forbids them to impose by indirection. And the case of Looney v. Crane, 245 U. S., 178, lays down the proposition that no tax may be measured by any elements of value on which a direct tax may not be levied.

Certainly the mining operation of the plaintiff is taxable; and if the state measures its exaction by the value of the product mined, without seeking to exact a tax from the commercial transactions of transporting and making sales for delivery in other states of its product, no objection can be raised, but it goes beyond its power when it adopts the measure of total receipts.

The plaintiff in this case unites its business of producing gas with that of transporting and making sales of it in other states, which transportation and the activities of making sale, as of necessity, enable it to get more for its product than what that product would bring if sold at the

mouth of the well and before it enters into interstate com-
[fol. 405] merce; and unless some deduction is made from the receipts from sales to purchasers in other states on account of such transportation and other activities of sale, the state is taking toll from interstate commerce.

"The gas carried outside the state is sold for more than that used therein, but this naturally would be so, considering the additional pipe lines, compressors, and labor employed in the longer transmission."

Pennsylvania v. West Virginia, 262 U. S. 589.

For this plaintiff to abandon its business of producing gas in order to escape the tax would involve a serious diminution in the value of its property devoted to such use in the state. Interstate sales of gas from its productive wells would cease, and the earning power of the plaintiff's business as a producer is enhanced by the fact that 82 per cent of its gross receipts is derived from interstate sales.

The defendants concede that the gas produced by the plaintiff and sold outside the state is in interstate commerce at the moment it enters the pipe line of the plaintiff at the well, and that more than 80 per cent of its total production is transported and sold in interstate commerce, which necessarily makes the transportation system of the plaintiff an instrumentality of interstate commerce, and that 82 per cent of its gross receipts are derived from the sale of said gas in interstate commerce, and that the tax which the plaintiff would be required to pay under Section 2-a of the act would be approximately $156,000.00 of which sum $123,600.00 would come from proceeds derived from interstate commerce.

Counsel for defendants concede that the correct inter-
[fol. 406] pretation of Section 2-c of the act denies the state the right to tax the privilege of engaging in the business of buying natural gas, transporting, and selling the same, and to measure the amount of the tax by the gross receipts, or gross income, where a portion of said gross receipts, or gross income, is derived from interstate commerce, for the reason that to do so would be a burden upon or an interference with interstate commerce. With this interpretation, this court is in full accord; but counsel for defendants insist that under Section 2-a the state has

the right to tax the privilege of engaging in the business of producing gas, transporting, and selling the same, and to measure the amount of the tax by a percentage of the gross receipts, even though 80 per cent of the production is transported and sold in interstate commerce, and that the transportation of the same is a mere incident to the business of mining and producing gas. They concede that the value of the production is enhanced by such transportation, but argue that in measuring the amount of the tax by a percentage of the gross receipts from the sale of said gas, the state has the right to take into consideration and include all the gross receipts derived from the sale of said gas in interstate commerce, for the reasons that the state has selected a proper subject to tax, and that the measure of the tax cannot be considered by the court, and that if interstate commerce is burdened at all, it is only incidentally and remotely. This is a distinction without a difference. The business of buying gas is just as much an occupation as the business of producing gas, and both are proper subjects of taxation. Only by ignoring the nature of the business of the plaintiff, and neglecting its most important incidents—namely, its transportation system and sale activities—can the act be said to effect interstate com- [fol. 407] merce only incidentally and remotely. The transportation system of the plaintiff is not, as counsel for defendants contend, a mere incident to its business of producing gas, but is, in the opinion of the court, the controlling incident of its business of producing gas, for without this vast transportation system, production would be vain; there could be no tax levied until the product was transported and sold; and no market could be had without this transportation system.

"We take judicial notice that gas, unlike oil, cannot be brought to the surface and stored to await a market for it, but must remain in nature's storehouse, and unless allowed to waste away, taken out only as and when the producer may be able to find customers to take and consume it."

65 W. Va., 531.

The doctrine contended for by the defendants in their interpretation of Section 2-a, namely, that in selecting the proper subject for the tax, they may adopt as the measure

of the tax a certain percentage of the gross receipts, and include therein receipts derived from interstate commerce, without burdening or interfering with the commerce clause of the Constitution of the United States, has been often repudiated by the decisions of the Supreme Court of the United States and the long line of cases in which gross receipts derived from interstate commerce have been held immune from state taxation is abundant proof of it.

Ratterman v. Western Union Tel. Co. 127 U. S., 411.
Fargo v. Michigan, 121 U. S., 320.
Philadelphia & Southern Mail S. S. Co. v. Pennsylvania, 122 U. S. 326.
Galveston H. & S. A. Ry. v. Texas, 210 U. S., 217.
Meyer v. Wells Fargo Co., 223 U. S. 298.
Crew-Levick Co. v. Pennsylvania, 245 U. S. 292.
Standard Oil Co. v. Graves, 249 U. S. 389.
Looney v. Crane Co., 245 U. S., 178.
[fol. 408] Oklahoma v. Wells Fargo Co., 223 U. S., 298.
United Fuel Gas Co. v. Hallanan, 257 U. S., 265.
Eureka Pipeline Co. v. Hallanan, 257 U. S., 277.
Pullman Co. v. Kansas, 216 U. S., 56.
Ludwick v. Western Union Tel. Co., 216 U. S., 146.
Atchison T. & S. F. Ry. v. O'Connor, 223 U. S., 280.
Locomobile Co. v. Mass., 246 U. S., 146.
International Paper Co. v. Mass., 246 U. S., 135.
Alpha-Portland Cement Co. v. Mass., 69 L. Ed., 549.
Shafer v. Farmers Grain Co., 69 Law Ed., 555.

In the Galveston H. & S. A. Ry. v. Texas case, supra, the minority of four called the demand an "occupation tax"; and like the defendants in the instant case, invoked the proper subject doctrine to declare that the receipts from interstate commerce were not themselves taxed; and in the dissenting opinion, Mr. Justice Harlan says (just as is said by the defendants in the instant case):

"The state only measures the occupation tax by looking at the entire amount of the business done within its limits, without reference to the source from which the business comes";

but the majority put this proper subject doctrine to one side, and this Galveston case has been referred to and ap-

proved in many other cases, including the Western Union Tel. v. Kansas case, 216 U. S., 1.

Of course, there are cases in which a tax measured by gross receipts was permitted, but those are cases in which the tax in lieu of or a substitute for a property tax, or as where the tax measured by gross receipts did not, as a matter of fact, burden or interfere with interstate commerce (American Manufacturing Co. v. St. Louis, 250 U. S., 463); or, as where in the Ficklen case, the tax was in default of a property tax. There are also cases where the measure of the tax was on the value of the product mined, but its [fol. 409] taxable value was not determined by its sales price, and the tax was collectible whether the product was ever transported or sold.

Lord v. Oliver Mining Co., 263 U. S. 172.
Heisler v. Thomas Colliery Co., 43 Supreme Court Rep., 83.

In the recent case in United States Clue Co. v. Oak Creek, 247 U. S. 321, the evil effects of all taxes measured by gross receipts were announced in no uncertain terms by Justice Pitney, who says:

"The difference in effect between a tax measured by gross receipts and one measured by net income recognized by our decisions, is manifest and substantial, and it affords a convenient and workable basis of distinction between a direct and immediate burden upon the business affected and a charge that is only indirect and incidental. A tax upon gross receipts affects each transaction in proportion to its magnitude and irrespective of whether it is profitable or otherwise. Conceivably, it may be sufficient to make the difference between profit and loss or to so diminish the profit as to impede or discourage the conduct of the commerce."

This court feels bound by the decisions of the Supreme Court of the United States, which hold that a privilege tax measured by gross receipts, which include receipts derived from interstate commerce, is invalid when it directly burdens interstate commerce, and particularly bound by the decision of the Supreme Court of Appeals of West Virginia in the case of Eureka Pipeline Co. v. Hallanan, re-

ported in 87 W. Va., at page 396, in which the identical question was raised and decided adversely to the defendants, as shown in the fourth point of the syllabus, which is as follows:

[fol. 410] "A state may not impose a tax upon the privilege of engaging in intrastate commerce and measure the amount thereof by a certain percentage of all the business transacted within the state whether interstate or intrastate."

And it is further shown on pages 408-9-10 and 11 of the opinion that the authority for the law as stated in said fourth point of the syllabus, is based upon a number of cases decided by the Supreme Court of the United States, which cases are cited therein.

Therefore, this court is constrained to hold that Section 2-a of the Act, when tested by its practical operation and effect, substantially burdens and interferes with interstate commerce.

As to the second principal ground asserted by the plaintiff for the injunction sought herein—namely, that the act violates Section 1 of Article 10, of the Constitution of the State of West Virginia, which provides that taxation of privileges and franchises of persons and corporations shall be by uniform and equal laws, the court is of opinion that the legislature has the right to classify for taxation, occupations, privileges and franchises of persons and corporations, as the right to tax gives the right to classify, provided the classification is made reasonable and justifiable; and this right to classify includes not only the right to select out certain businesses or occupations for the purpose of taxation, but also the right to classify the persons or corporations engaged in that business, if the same is reasonable and justifiable.

In the case of Cooper Co. v. Sherr, 50 W. Va., on page [fol. 411] 549, Judge Poffenbarger, in speaking of Section 1, of Article 10, says:

"While that clause says the legislature shall have power to tax by uniform and equal laws all privileges and franchises of persons and corporations, it is admitted that in doing so the legislature may lawfully classify such privi-

leges and franchises, and assess and collect taxes upon them in different ways, and ascertain their values for the purpose of taxation by different methods, making the method and mode of taxation uniform as to each class. The principle is so well settled that it is not questionable."

See also

Eureka Pipe Line Co. v. Hallanan 87 W. Va., 396.
Baldwin Tool Works v. Blue, 240 Fer., 202.
Bridge Co. v. County Court, 41 W. Va., 658.

In the case of Citizens Telephone Co. v. Fuller, 229 U. S., 322, the Supreme Court said that the power to classify for the purpose of taxation is broader than such power of classification when exercised for other legislative purposes; and as long as the classification is reasonable, the provisions of the Constitution as to equality and uniformity are not violated.

See Cooley on Taxation, 4th Ed., Vol. 1, Sec. 349, in re Watson, 2 Ann. Cas. 321.

"If the constitutional rule as to uniformity is applicable to occupation or privilege taxes, it does not deprive the legislature of the power of dividing the objects of taxation into classes."

State v. Willingham, 52 L. R. A. 198.

"A tax on all purchasers of land at sales whose purchases exceed $500.00, held constitutional and a reasonable classification."

Com. v. Hazel, 155 Ky., 30.

[fol. 412] "A statute imposing on hotel keepers a license tax graduates in amount by the gross receipts and exempting those whose yearly receipts are less than $1,000.00 is constitutional."

Cobb v. The Board of Commissioners Durham Co., 122 N. C., 307.

"The principle of uniformity requires that all exemptions, reductions, and commutations, if allowed, must be allowed in favor of all members of a given class."

Joseph v. Milledgeville, 97 Ga., 513.

"Exempting from a tax imposed on telegraph and telephone companies, those companies having gross receipts of less than $500.00, has been held not an unreasonable classification."

Cooley on Taxation, 4th Ed., Vol. 1, Sec. 280;
Citizens Telephone Co. of Grand Rapids v. Fuller, 229 U. S., 322.

The exemption of $10,000.00 under 2-h of the Act is not limited to any particular privilege or occupation, but everybody has the benefit of it.

See King v. Mullens, 171 U. S., 404.

The above decisions, and others, which are cited in the opinions therein, clearly sustain the power of the legislature to *cal*ssify and to make the exemption of $10,000.00, as provided in the act. The court is therefore of opinion the act does not contravene Section 1 of Article 10 of the State Constitution.

A decree may be prepared enjoining the defendants from enforcing the provisions of Section 2-a of the Act in question.

Charleston, West Virginia, May 10, 1926.

[fol. 413] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 414] In Circuit Court of Kanawha County

Petition for Appeal—Filed May 25, 1926

To the Honorable Arthur P. Hudson, judge of the Circuit Court of Kanawha County, West Virginia:

Your Petitioners, Grant P. Hall, State Tax Commissioner of West Virginia, and Howard B. Lee, Attorney General of the State of West Virginia, respectfully represent that they are aggrieved by a final decree of the Court of Common Pleas of Kanawha County, West Virginia, entered on the 10th day of May, 1926, in the chancery cause therein pending wherein Hope Natural Gas Company, a corporation, was plaintiff and your Petitioners were defendants.

All of the original papers in the cause, including the printed stipulation of facts entered between the parties, and the exhibits therewith, read and considered by said Court of Common Pleas, together with the original orders and decrees, endorsed for entry by the judge of said Court and duly entered on and recorded in the proper chancery record book of said court, are herewith presented. Your Petitioners assign the following errors in said final decree to their prejudice:

First. The court below erred in finding and decreeing that the Act of the Legislature of West Virginia, Chapter One (Senate Bill No. 1), enacted at an extraordinary session of said Legislature in the year 1925, particularly mentioned in the pleadings, papers and record in said cause, [fol. 415] as to Section 2-a of said Act, in so far as it purports to impose a tax on the business of mining and producing for sale, profit or use natural gas, is in every respect null and void as to the plaintiff, its property, franchises and business, and that so much of said Section 2-a as applies to the business of mining and producing natural gas is not divisible or severable.

Second. The court below erred in perpetually inhibiting, enjoining and restraining the defendants from enforcing, or attempting to enforce in any manner the said Act, or any of the provisions thereof, as to the natural gas mined and produced by the plaintiff within the state of West Virginia, and from assessing and collecting, or in proceeding to collect from plaintiff the tax due to the state of West Virginia under said Act, for the privilege of engaging in the business of mining and producing natural gas therein for sale, profit or use.

Third. The Court below erred in finding and decreeing that the plaintiff is not subject to a public service company tax under Section 2-d of said Act as to the natural gas produced by it in the State of West Virginia, inasmuch as the gas produced by the plaintiff in said state, under the court's finding and decree, is not included in the measure of any tax under Section 2-a.

Fourth. The court below erred in overruling the motion of the defendants to deny the plaintiff an injunction, so [fol. 416] far as the court granted the same, because the

plaintiff had not paid, or tendered to pay the amount of any tax, or taxes, due from it under Section 2-d of said Act; And, further, because the court overruled the defendants' motion to make the awarding of an injunction to the plaintiff, conditioned upon the payment of taxes due under Section 2-d.

Fifth. And for these and other errors apparent upon the face of the record, or which may hereafter be assigned.

Your Petitioners, therefore, pray for an appeal from said decree of May 10, 1926.

Grant P. Hall, State Tax Commissioner of West Virginia; Howard B. Lee, Attorney General of West Virginia, by Their Attorneys. Howard B. Lee, Attorney General; R. Dennis Steed, Assistant Attorney General; R. A. Blessing, Assistant Attorney General; John T. Simms, Counsel for State Tax Commissioner. T. C. Townsend, Fred O. Blue, of Counsel for Defendants.

[fol. 417] We, T. C. Townsend and Fred O. Blue, attorneys practicing in the Circuit Court of Kanawha County, West Virginia, do certify that in our opinion there is error in the decree complained of above and that the same should be reviewed by this court and upon hearing, reversed.

Given under our hands this 24th day of May, 1926.

T. C. Townsend, Fred O. Blue.

[File endorsement omitted.]

In Circuit Court of Kanawha County

Decree

This 25th day of May, 1926, came Grant P. Hall, State Tax Commissioner of West Virginia, and Howard B. Lee, Attorney General of the state of West Virginia, defendants in the above styled cause, by their counsel, and presented in open court their petition assigning grounds of error upon and praying for an appeal from a final decree of the Court

of Common Pleas of Kanawha County, West Virginia, en-
[fol. 418] tered by said court on the 10th day of May, 1926, in the chancery cause therein then pending wherein Hope Natural Gas Company, a corporation, was plaintiff and said Petitioners were defendants; and with said petition presented all of the original papers in said cause, including the printed stipulation of facts entered into between the parties, and the exhibits therewith, read and considered by said Court of Common Pleas, together with the original orders and decrees, endorsed for entry by the judge of the said Court of Common Pleas and duly entered on and recorded in the proper chancery record book of said court.

And the court having duly considered said petition and all of the original papers in said cause, including the printed stipulation of facts entered into between the parties, and the exhibits therewith, read and considered by said Court of Common Pleas, together with the original orders and decrees, endorsed for entry by the judge of said Court of Common Pleas and duly entered on and recorded in the proper chancery record book of said court, is of opinion that said decree complained of is plainly right, and on this ground and for this reason is of opinion that the Petitioners are not entitled to the appeal prayed for, it is, therefore, adjudged, ordered and decreed that the final decree of the said Court of Common Pleas of Kanawha County, pronounced and entered by it on the 10th day of May, 1926, in the above entitled cause is plainly right; and it is, therefore, further adjudged, ordered and decreed that the appeal prayed for be, and the same is hereby rejected and [fols. 419 & 420] refused. And it is further adjudged, ordered and decreed that the Clerk of the Circuit Court of Kanawha County do enter this order upon the chancery order book of said court.

(Endorsed:) Enter: A. P. Hudson, Judge. Entered in Chancery Order Book May 25, 1926. No. 52, Page 65.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 421] In Supreme Court of Appeals of West Virginia

Cross-assignments of Error—Filed September 2, 1926

To the Honorable Judges of the Supreme Court of Appeals:

Comes now the Hope Natural Gas Company, a corporation, appellee in the above styled cause, in which an appeal from the decree of the Court of Common Pleas of Kanawha County in said cause on the 10th day of May, 1926, and the order of the Circuit Court of said County entered on the 25th day of May, 1926, has heretofore been awarded by this Court, and here cross-assigns error in and to said decrees, as follows:

First. The said Court of Common Pleas erred in refusing to decree to the plaintiff all the relief prayed for in its bill.

Second. Said court erred in refusing to hold the tax act in question to be void in toto as to the business and property of the plaintiff.

Third. Said court erred in not holding said act to be violative of the Fourteenth Amendment to the Constitution of the United States.

Fourth. Said court erred in not holding said act to be violative of the Constitution of West Virginia.

Fifth. Said court erred in other respects appearing by the record, and to be assigned at the hearing.

Said appellee therefore prays that in the determination of the appeal aforesaid, this Court will review and correct the said decrees in the particulars hereinabove specified, [fol. 422] and that as so modified and corrected said decrees be affirmed.

Hope Natural Gas Company, a Corporation, Appellee, by Counsel. H. D. Rummel, Charles Powell, Kemble White, Anthony F. McCue, S. E. W. Burnside, Edward M. Borger, Arthur E. Young, Counsel for Appellee.

I, H. D. Rummel, an attorney, practicing in the Supreme Court of Appeals of West Virginia, do certify that in my

opinion there is error in the decrees complained of in the foregoing petition, for which the same should be reviewed by said Court and corrected as therein set out.

H. D. Rummel, Attorney-at-Law.

[File endorsement omitted.]

[fol. 423] Minute entry of argument and submission September 2, 1926, omitted in printing.

IN SUPREME COURT OF APPEALS OF WEST VIRGINIA

FINAL ORDER—September 21, 1926

[Title omitted]

Upon an appeal from and supersedeas to a decree of the Circuit Court of Kanawha County, pronounced on the 25th [fol. 424] day of May, 1926.

The Court, having maturely considered the transcript of the record of the decree aforesaid and the arguments of counsel thereon, is of opinion, for reasons stated in writing and filed with the record, that there is error in said decree but that the same may be corrected in this Court. It is therefore adjudged, ordered and decreed that the decree of the Circuit Court of Kanawha County, pronounced in this cause on the 25th day of May, 1926, in so far and in so far only as it enjoins the defendants from enforcing against the plaintiff the provisions of Sec. 2a of Chapter 1 of the Acts of the Extraordinary Session of 1925, of the Legislature of West Virginia, by imposing a tax upon the natural gas produced by the plaintiff, based upon the value thereof within the State and before it enters interstate commerce, be and the same hereby is modified and corrected so as to permit defendants to impose and enforce against the plaintiff a tax, under said section, upon the natural gas so produced by it, based upon the value thereof within the State and before it enters upon interstate commerce, and that in all other respects said decree as hereby modi-

fied and corrected be and the same hereby is affirmed. It is further adjudged, ordered and decreed that the appellee do pay to the appellants, the parties substantially prevailing, their costs about the prosecution of their appeal and supersedeas in this Court in this behalf expended: all of which is ordered to be certified to the Circuit Court of Kanawha County.

The decision of points in the foregoing cause, as the [fol. 425] same appears from the syllabus and written opinion prepared by Judge Hatcher, was concurred in by Judges Miller and Lively. Judges Litz and Woods concurred in part and dissented in part, and each filed an opinion.

The written opinions referred to in the foregoing order are in words and figures as follows:

[fol. 426] In Supreme Court of Appeals of West Virginia

[Title omitted]

Kanawha County

Affirmed in part Reversed in part

Opinion

Hatcher, Judge:

1. Chapter 1 of the Acts of the Legislature of West Virginia, passed at the Extraordinary Session, 1925, violates neither the State nor the Federal Constitution.

2. Within reasonable limits the State Legislature may classify various occupations for taxation and may impose different specific taxes thereon, provided the enactment applies alike to all within each class.

3. The Legislature may not under any formula or characterization lay a direct tax on the gross proceeds of interstate commerce, except where such tax is in lieu of all other taxes and amounts to no more than the ordinary tax on property.

4. Under Section 2a, Chapter 1, supra, the State may take into consideration the gross proceeds of a commodity

produced in this state and sold in another state, but only for the purpose of determining the value of such commodity within the state and before it enters interstate commerce.

[fol. 427] HATCHER, Judge:

The Bill in this case was filed in the Common Pleas Court of Kanawha County in Oct., 1925. That court, sustaining the contention of plaintiff in part, held that Section 2a of Chapter 1, of the Acts of the Legislature of West Virginia, passed at the Extraordinary Session, 1925, "when tested by its practical operation and effect, substantially burdens and interferes with interstate commerce", and accordingly enjoined defendants from enforcing the said Act against the plaintiff, as to the gas sold by it in other states.

The judgment of that court was upheld by the circuit court of Kanawha County, and the case is here on the appeal of defendants.

From an agreed statement of facts, it appears that plaintiff is the owner of leases on 860,750 acres of oil and gas territory situated in twenty-five counties in the state of West Virginia; that on this territory it now has 3,178 producing gas wells from which it secured 23,194,711,000 cu. ft. of gas for the year ending June 1, 1925; that it purchased from other producers of gas in the state of West Virginia during that period 25,456,947,000 cu. ft. of gas, making a total of 48,651,658,000 cu. ft. of gas produced and purchased by it during that year; that it owns and operates several thousand miles of gathering lines of pipe which range from 2 to 6 ins. in diameter, and approximately 1,300 miles of marketing or trunk lines ranging from 8 to 20 ins. in diameter; that the gas is kept continuously moving through plaintiff's pipe lines by means of 42 compressing stations; that more than 80% of the gas it produces and purchases is transported through its pipe line system to the states of Ohio and Pennsylvania; that the gas, in the language of the Stipulation, "continues to flow in an un-[fol. 428] interrupted and unbroken stream from the time it leaves the wells of the plaintiff or reaches its gathering lines from the wells or lines of the producers from whom it purchases such gas, until it is delivered to the final point of consumption either upon plaintiff's lines or the lines con-

nected with its system"; that for the year 1925 the plaintiff paid taxes as follows: property tax $670,718.62, corporation tax (on capital stock year ending June 30, 1925) $5,440.00, public service commission assessment $5,062.50, gross sales tax to June 30, 1925, $22,513.27, corporation license tax, Parkersburg, $10.50, franchise tax, Parkersburg, $7,542.77, and total of $711,287.66; that the rate of levy for state purposes in the year 1925 was 14¢ on the $100.00 valuation, and that of the $670,718.62 property tax, the sum of $51,187.50 was collected for exclusive State purposes; that the average price paid by plaintiff for the gas purchased by it during the period beginning Jan. 1, 1925 and ending Oct. 1, 1925, was approximately 17¢ per 1,000 cu. ft.; that the average price received by it for the gas which it sold within the state of West Virginia during that period approximated 30¢ per 1,000 cu. ft.; and that the average price which it was receiving for gas in the states of Ohio and Pennsylvania at the time this suit was instituted was approximately 36¢ per 1,000 cu. ft.

The plaintiff's main contentions are, that this Act purports to tax interstate commerce and violates Art. 1, Sec. 8 of the Federal Constitution; that the Act denied to plaintiff the equal protection of the law and violates the Fourteenth Amendment of the Federal Constitution, and that the taxes sought to be imposed by the Act are not equal and uniform, and are in violation of Art. 10, Sec. 1, of the Constitution of West Virginia. Section 2a of the Act is as [fol. 429] follows:

"Upon every person engaging or continuing within this state in the business of mining and producing for sale, profit, or use, any coal, oil, natural gas, limestone, sand or other mineral product, or felling and producing timber for sale, profit or use, the amounts of such tax to be equal to the value of the articles produced as shown by the gross proceeds derived from the sale thereof by the producer (except as hereinafter provided), multiplied by the respective rates as follows: Coal, forty-two one hundredths of one percent; oil, one per cent; natural gas, one and seventeen-twentieths of one per cent; limestone, sand or other mineral product, nine-twentieths of one per cent; timber, nine-twentieths of one per cent. The measure of this tax is the

value of the entire production in this state, regardless of the place of sale or the fact that deliveries may be made to points outside the state."

1

By the terms of the statute the tax is to be calculated on the value of the article produced, and that value is to be shown by the gross proceeds of its sale. Art. 1, Sec. 8, of the Federal Constitution as interpreted by Federal decisions, denies to a state the right to impose a direct tax on the gross proceeds of interstate commerce, except as hereinafter noted. A large per cent of the commodities named in the statute is sold in other states. The plaintiff contends that as the Act contains no exception it indicates a plain intention to tax the gross proceeds of sales in interstate commerce. There is a presumption, however, that the Legislature did not intend to violate any provision of the Federal Constitution. Pipe Line Co. v. Hallanan 87 W. Va. 396; St. Louis S. W. Ry. Co. v. Arkansas 235 U. S. 350. In fact it has been declared our duty to "restrain the operation of a statute within narrower limits than its words import", when satisfied that a literal interpretation will include cases not intended by the Legislature. Ry. Co. v. Conley 67 W. Va. 129 (pt. 28 syl.). Consequently, we are [fol. 430] warranted in presuming that the Legislature did not mean to include, as an element of value, so much of the gross proceeds of the sale of an article in interstate commerce, as is represented by the cost of transportation, and we restrain the operation of the statute accordingly. This presumption and this limitation are strengthened by the concluding sentence of the statute, whereby the measure of the tax is declared to be the value of the product in this state, regardless of place of sale or delivery outside of state. If the sale of a commodity produced in this state imposes on the seller delivery in another state, then the sale price necessarily includes the cost of the delivery. Such sale price would not reflect the worth of the commodity in the state, but the worth within the state plus the cost of transportation. If the taxation value of the products named in the statute be liimted to their value in the state, and before they enter interstate commerce, the statute does

not manifest a purpose to violate Art. 1 of the Federal Constitution, and we so hold. Am. Mfg. Co. v. St. Louis, 250 U. S. 459.

2

In Bell's Gap Rr. Co. v. Penn. 134 U. S. 232, the same contention that plaintiff now advances here was made against the validity of a Pennsylvania taxation Act. But the Supreme Court held: "The provision in the XIV Amendment, that no state shall deny to any person within its jurisdiction the equal protection of the laws, was not intended to prevent a State from adjusting its system of taxation in all proper and reasonable ways. * * * It may impose different specific taxes upon different trades and professions, and may vary the rates of excise upon various products, it may tax real estate and personal prop- [fol. 431] erty in a different manner; it may tax visible property only, and not tax securities for payment of money; it may allow deductions for indebtedness, or not allow them. All such regulations, and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the State Legislature, or the people of the state in framing their Constitution. * * * We think that we are safe in saying that the XIV Amendment was not intended to compel the States to adopt an iron rule of equal taxation." This doctrine has been repeatedly affirmed. Express Co. v. Seibert 142 U. S. 339; Clark v. Titusville 184 U. S. 329; Armour Packing Co. — Lacy 200 U. S. 226; Citizens Tel. Co. v. Fuller 229 U. S. 322; Mich. Cent. Ry. Co. v. Powers 201 U. S. 245; Heisler v. Thomas Col. Co. 260 U. S. 245. "The selection of all who are engaged within the state in mining ore or producing ores on their own account, * * * as the subjects of an occupation tax is permissible." Oliver Iron Co. v. Lord 262 U. S. 245.

The charge that the statute imposes double taxation is also not well founded. "Double taxation in a legal sense does not exist unless the double tax is levied upon the same property within the same jurisdiction. Plaintiffs in error pay one tax with respect to property, another with respect to the privilege or occupation: hence the taxation is not double." Ohio Tax Cases 232 U. S. 576 (593-4). The case

of Dawson v. Ky. Dist. and Warehouse Co. 255 U. S. 288, relied on by plaintiff does not apply here. As distinguished by the Supreme Court in the Oliver Mining Co. case, the tax in the Dawson case "was not laid on any business, but on the mere exertion by an owner of distilled spirits of his right to withdraw them from a bonded warehouse and had none of the ordinary incidents of an occupation tax."

The foregoing decisions uphold the right of the legis- [fol. 432] lature to classify the subjects of taxation. When the right to classify is conceded, it necessarily follows that the legislature has the right to select the differences upon which the classification will be based. Citizens Tel. Co. v. Fuller, supra. No proof is offered that the classification of the statute is unreasonable. The statute makes no discrimination in favor of one as against another of the same class. We therefore see no repugnance in the statute to the Fourteenth Amendment.

3

Plaintiff's third proposition is based on the provision in the Act for a deduction of $10,000.00 from the values or from the gross income taxed. Statutory exemptions from taxation are generally upheld when they apply alike to all property of the same class, and are not unreasonable or arbitrary. No facts are presented to show that this exemption is unreasonable. In Pipe Line Co. v. Hallanan, supra, an exemption from taxation of pipe lines under ten miles was under consideration. The court stated that as such lines were owned by small producers and were not used to any considerable extent in the regular business of transporting oil, these facts offered a "reasonable basis for the classification thus made." May we not as well say here that the mine which does not do a gross business of more than $10,000.00 a year is owned by a small producer, that such mine is not engaged to any considerable extent in the business of mining and that such facts furnish a reasonable basis for the exemption? The right of a legislature to classify subjects for taxation "in terms of earnings instead of in terms of method and use" has also been directly recognized and approved by the Supreme Court. "The legislature, in the exercise of its power of regulating

fares and freights, may classify the railroads according [fol. 433] to the amount of the business which they have done or appear likely to do. Whether the classification shall be according to the amount of passengers and freight carried, or of gross or net earnings, during a previous year * * * is a matter within the discretion of the legislature. If the same rule is applied to all railroads of the same class, there is no violation of the constitutional provision securing to all the equal protection of the laws." Dow v. Beidleman 125 U. S. 680, (691). The immunity favoring gross incomes not exceeding $10,000.00 does not discriminate in favor of one, as against another of the same class, and therefore presents no arraignment of the right to classify. "If the law operates upon every person within the relation or circumstances provided for, it is sufficient as to uniformity." McAunich v. Rr. Co. 20 Iowa 338.

4

The defendant's main contention is that under the facts developed in this case, the State has the right under Sec. 2a to calculate the tax on the gross proceeds of the sale of the plaintiff's gas, sold without the state. Their brief contends "there is no tax on the sale or the transportation of the gas or on the proceeds from the sale thereof," but that the gross sales price is simply the taxable measure of the value of the commodity.

It is conceded as defendants assert, that mining (when considered apart from transportation) is not interstate commerce. It is immaterial, for the purpose of this discussion, whether plaintiff's pipe line system is a mere incident to its business, as defendants contend, or an integral part thereof, as plaintiff maintains. The important factor [fol. 434] is that by means of this system, whether it be incidental or integral, plaintiff's gas becomes a subject of interstate commerce. "In order that property in transit may be exempt from local taxation as a subject of interstate commerce it is not essential that it be in charge of some common carrier engaged in that class of business." Oil and Gas Co. v. Ehrhardt 244 Ill. 634. From the time the product of a mine commences its final movement for transportation, it is governed and protected by the national

law. Coe v. Errol 116 U. S. 517, (525). "Natural gas is a lawful article of commerce and its transmission from one state to another for sale and consumption in the latter is interstate commerce." Penn. v. W. Va. 262 U. S. 553. In U. S. Fuel Co. v. Hallanan 257 U. S. 277, the transmission of gas to another state by a pipe line system similar in all respects to that of plaintiff was held to be interstate commerce.

It may be admitted, as defendants contend, that the "incidental facility of transportation" increases the value of the gas before it enters the pipe lines. Such an admission, however, in no wise disturbs the fact that the average price received by plaintiff for gas sold without the state is approximately six cents higher than the average (not the occasional or exceptional) price of gas sold by plaintiff within the state. Neither does the admission alter the fact that it necessarily costs plaintiff something to transmit the gas from the place of production or purchase to the state line, and that the cost of transmission is included in the sales price. "The gas carried outside the state is sold for more than that used therein, but this naturally would be so, considering the additional pipe lines, compressors, and labor employed in the longer transmission." Penn. v. W. Va. supra.

In Wallace v. Hines 253 U. S. 66 (69), the Supreme Court [fol. 435] said: "The only reason for allowing a state to look beyond its borders when it taxes the property of foreign corporations is that it may get the true value of the things within it, when they are part of an organic system of wide extent, that gives them a value above what they otherwise would possess. The purpose is not to expose the heel of the system to a mortal dart—not, in other words, to open to taxation what is not within the state." By parity of reasoning we can as well say that the only reason for permitting consideration of the price plaintiff receives for delivering gas through its transmission system to another state, is to get the true value of the gas within the state before it enters interstate commerce, and that purpose is not to open to taxation interstate commerce itself. "Under no formula can a state tax things wholly beyond its jurisdiction." Union Tank Line Co. v. Wright 249 U. S. 275.

Throughout a century of attempted municipal encroachment on Federal authority, the Supreme Court has trumpeted the inhibition that a state cannot lay a direct tax on the gross proceeds derived from interstate commerce, except where such tax is in lieu of all other taxes and amounts to no more than the ordinary tax on property. Postal Tel. Co. v. Adams 155 U. S. 688; U. S. Express Co. v. Minn. 223 U. S. 335. It is true that a modification of this rule is indicated in State Tax on Rr. Gross Receipts 82 U. S. 284, Main v. Grand Truck Ry. Co. 142 U. S. 217, and Ficklen v. Shelby Co. 145 U. S. 1. But the Tax Receipts decision was disapproved in Phila. and S. M. Co. v. Penn. 122 U. S. 326 (342), the Maine case was set apart as "the extreme case" in Galveston v. Texas 210 U. S. 217, and in Crew Levick Co. v. Penn. 245 U. S. 298, the Ficklen decision was destroyed as a precedent by its characterization as "exceptional". Crew Levick Co. v. Penn., supra, Fargo v. Mich. 121 U. S. 230, Phila. and S. M. Co. v. Penn. supra, [fol. 436] Galveston v. Texas, supra, and other Federal decisions, deny the right of the State, in express terms, to tax the gross proceeds derived from interstate commerce, when the property of the corporation is otherwise taxed, as it is in the present case. Commenting on Phila. and S. M. Co. v. Penn. the Supreme Court said, in the Galveston case: "We regard this decision as unshaken, and as stating established law." It is a tradition of our court to follow, not exceptional or extreme decisions, but those which are unshaken and which state established law.

There is a line of cases, including Home Ins. Co. v. N. Y. State 134 U. S. 594, Flint v. Stone Tracy Co. 22 U. S. 107, Peck v. Lowe 247 U. S. 165, U. S. Glue Co. v. Oak Creek 247 U. S. 321, and Hump Hairpin Co. v. Emerson 258 U. S. 290, which have upheld the right of a state to tax the net income of a corporation, derived from interstate commerce. The reasons supporting these decisions are that such tax is not imposed directly upon the proceeds of interstate commerce, is not computed upon it, and that such assessment, so far as interstate commerce is concerned, is "incidental, remote, and unimportant, and is therefore constitutional." In Glue Co. v. Oak Creek, supra, the distinction between a direct tax and one which was an indirect burden upon interstate commerce, is sharply drawn. After referring to

the case of Peck v. Lowe, supra, the court in the Glue Co. case said:

"The distinction between a direct and an indirect burden by way of tax or duty was developed, and it was shown that an income tax laid generally on net incomes, not on income from exportation because of its source or in the way of discrimination, but just as it was laid on other income, and affecting only the net receipts from exportation after all expenses were paid and losses adjusted and the recipient of the income was free to use it as he chose, was only an indirect burden. The difference in effect between a tax measured by gross receipts and one measured by net income, recognized by our decisions, is manifest and substantial, and it affords a convenient and workable basis of distinction between a direct and immediate burden upon the business affected and a charge that is only indirect and incidental. A tax upon gross receipts affects each transaction in proportion to its magnitude and irrespective of whether it is profitable or otherwise."

[fol. 437] In determining whether a tax is a direct burden on interstate commerce, the Supreme Court has also repeatedly held that it would regard the effect and operation of the exaction, and disregard the manner in which the taxing scheme was characterized. Western Union Tel. Co. v. Kansas 216 U. S. 1; Galveston etc. Ry Co. v. Texas, supra; Kansas City Ry. Co. v. Kansas 240 U. S. 227 (231). The practical operation of the statute as contended for by defendants would be that the State of West Virginia would exact from the plaintiff $1.85 of every $100.00 it received from the sale of its gas in Ohio and Pennsylvania. This would be a direct burden on interstate commerce.

The cases of Oliver Mining Co. v. Lord, supra, and Am. Mfg. Co. v. St. Louis, supra, relied on so confidently by defendants, do not support their contention. In the Mining Co. case the statute under consideration limited the value of the ore for taxation to its worth "at the place where the same is brought to the surface," and even permitted the cost of mining the ore to be subtracted from that value. In the second case, a tax was upheld which measured the value of goods manufactured in a local factory, by sales made from warehouses without the state. The statute

in that case was levied against "each one thousand dollars, or fractional part thereof, of sales made by," etc. The measure of the value of the manufactured article was therefore its sales price and not the gross receipts from its sale. No mention is made in the opinion of freight paid, or of the gross proceeds of the sales. We are warranted in assuming that the city did not attempt to include for taxation as a part of the sales price, the freight on the merchandise to the foreign warehouse. The reason impelling the decision is: "In the outcome the tax is the same in amount as if it were measured by the sale value of the goods, but imposed upon the completion of their manufacture." [fol. 438] Consequently, the question of the validity of attempting to tax gross proceeds of the sales of articles delivered by the producer or manufacturer in a foreign state, did not arise and was not decided in either the Mining Co. or the Mfg. Co. case.

In Pipe Line Co. v. Hallanan, supra, the same argument now made by defendants here, was advanced and condemned as sophistical and amounting merely to a "confusion of terms." "It it can be said that the legislature has the power to tax the privilege of engaging in a particular kind of intrastate commerce in the state, and then measure that tax by the amount of interstate commerce done, as well as by the amount of intrastate commerce, it would accomplish by indirection what, by the uniform holdings, it could not accomplish directly. It could under the guise of taxing the privilege of doing intrastate commerce take a part of the interstate commerce. It seems to us that the reasoning which seeks to justify the adoption of the measure of the tax sought to be applied in this case is sophistical and amounts to simply a confusion of terms, the result being exactly the same as if the tax had been laid upon the privilege of engaging in interstate commerce. The courts do not look at the form which may be adopted to accomplish a particular purpose, but where it appears that the necessary effect of the procedure contended for is to produce a result which necessarily imposes a burden beyond the power of the legislature, the form will be disregarded."

We therefore hold, under the facts in this case, that the defendants may not treat the gross proceeds of plaintiff's

sales outside the state as the worth of its gas within the state, but that they may enforce the Act upon the value thereof within the state, and before it enters interstate commerce. The injunction herein will be accordingly so modified.

Affirmed in part, reversed in part.

[fol. 439] Woods, Judge (concurring in part, dissenting in part):

This dissent from my brethren goes only to their conclusion that the law in its practical operation burdens unduly interstate commerce, and to the resultant relief thereby afforded the petitioner.

This Court holds, and rightly so, that the tax sought to be imposed here is an occupation tax. This fact being established, in logical sequence is the question of the mode and ascertainment of the value thereof. The reference by the statute to the gross receipts, and to a certain percentage of the same, in determining the amount of the tax is simply to ascertain the value of the business done by the corporation, and thus obtain a guide to a reasonable conclusion as to the amount of the occupation tax which should be levied. This reason finds support in Maine v. Railway Co., 142 U. S. 217. There a state statute required every corporation, person or association operating a railroad within the state to pay an annual tax for the privilege of exercising its franchise therein, to be determined by the amount of its gross transportation receipts. The court said that this tax was not on the goods nor on proceeds of the goods, and, if it could be said to affect interstate commerce in any way, it was incidently, and so remotely as not to amount to a regulation of interstate commerce. The same court in Ficklen v. Shelby County Taxing District, 145 U. S. 1, approved the foregoing doctrine, holding that one cannot escape payment of percentage tax on its gross yearly earnings on the ground that its business for the year consisted entirely in sales to non-residents, and that the tax therefore would be a burden on interstate commerce.

Our Legislature adopted what it considered the most practicable way of determining the value of the business of the corporation in the state whose occupation was sought to be taxed. There was no measurement of the volume of

gas at the mouth of the well obtainable. It adopted the only method left open by the petitioner under its plan by which its gas is produced to obtain the value thereof. Might not the state, therefore, urge that the corporation, since it chooses to combine local business and interstate busi- [fol. 440] ness in such a way that the value of the former cannot be determined, cannot complain that the only method by which such value can be determined must necessarily include receipts from interstate commerce? No constitutional objection lies in the way of a legislative body prescribing any mode of measurement to determine the amount it will charge for the privilege it bestows. Home Insurance Co. v. New York, 134 U. S. 594. The manner in which the value shall be assessed, the rate of taxation, however arbitrary or capricious, are mere matters of legislative discretion. It is not for us to suggest in any case that a more equitable mode of ascertainment or rate of taxation might be adopted than the one prescribed by the legislature of the state; our only concern is with the validity of the tax; all else lies beyond the domain of our jurisdiction. Minot v. Philadelphia R. Co., 65 U. S. 206; Coal & Coke Co. v. Tax Commissioner, 59 W. Va. 607.

In interpreting the federal statute imposing a tax on any firm, corporation, or person carrying on or doing business of refining sugar, etc., based upon the gross annual receipts of such business, the court said, in Spreckels Sugar Refining Co. v. McClain, 192 U. S. 397: "Clearly the tax is not imposed upon the gross annual receipts as property, but only in respect to the carrying on or doing the business of refining sugar. It cannot be otherwise regarded because of the fact that the amount of the tax is measured by the amount of the gross annual receipts." How apropos is this of the case under consideration? There, as here, an effort was made to get away from the language of the statute, upon the inquiry as to what the subject was and the nature of the tax.

Ficklen v. Shelby County Taxing District, supra, has not been overruled. (31 Harvard L. Rev., 763, note 156.) This decision makes it possible for the Supreme Court to permit taxes on taxable occupations to be measured in part by receipts not themselves directly taxable. It is contended that this decision was shaken by the later decision

of Commonwealth v. Crew Levick Co., 245 U. S. 292. The [fol. 441] opinion of the court distinguished the Ficklen case, on the ground that the tax in question in the latter case was not an occupation tax, as was the case in the former. The Galveston Case, 210 U. S. 217, upon which the petitioner leans so confidently was likewise a case where the statute did not impose the tax as an occupation tax, Mr. Justice Holmes observing that the tax in question "is merely an effort to reach the gross receipts." This decision loses its force as a precedent when we recall that the greater part of the business of the railroad in the latter case was admittedly interstate. These facts need only to be stated to show the inapplicability of that decision to the case under consideration here, where the business of producing gas on which the tax is levied is intra-state.

Our Supreme Court held, in Suttle v. Hope Natural Gas Co., 82 W. Va. 729, that: "Producing natural gas is local in nature and clearly separable and distinguishable from the marketing or interstate portion of the industry." No case has been cited by counsel for the petitioner where the United States Supreme Court has condemned a state tax on wholly local or intra-state business of mining or manufacturing, even though the products or commodities mined or manufactured were sold in interstate commerce and the tax measured by the amount of such sales. Following the line of reasoning which the court lays down, to its logical conclusion, to support the contention that an occupational tax levied upon any other value than the price at the well would render the statute unconstitutional as a burden upon interstate commerce, it would follow that no tax whatever could be imposed, for the reason that the gas produced by the petitioner is flowing in interstate commerce from the time it escapes from its rock bed, even before reaching the surface.

If the tax under section 2a affects interstate commerce, it does so only incidentally, and therefore is not a regulation of, a burden on or interference with such commerce, and is not invalid on account of such incidental effect. As heretofore stated, the Supreme Court of the United States [fol. 442] has repeatedly held that the consequential burden of proper local taxation on interstate relations and transactions, including sales, transportation and everything else

that enters into such commerce, is incidental, not direct, hence not an invasion by the state of the domain of interstate commerce. American Manufacturing Co. v. City of St. Louis, 250 U. S. 459; Oliver Iron Mining Company, 262 U. S. 172.

The two last mentioned cases are the most recent pronouncements of the court of last resort on the question under discussion. In the Oliver Iron Mining Company case, Minnesota had imposed a tax on persons engaged in the business of mining or producing iron ore, the amount of the tax being equal to six per centum of the valuation of all ores mined or produced in addition to all other taxes. The tax was assailed as being in conflict with the commerce clause of the Federal Constitution. The court there said: "Plainly the facts do not warrant the contention. Mining is not interstate commerce, but like manufacturing is a local business, subject to local regulation and taxation. Its character in this regard is intrinsic, is not affected by the intended use or disposal of the product, is not controlled by contractual engagements, and persists even though the business be connected with interstate commerce. * * * The ore does not enter interstate commerce until after mining is done and the tax is imposed only in respect to the mining. No discrimination against interstate commerce is involved. The tax may indirectly and incidentally affect such commerce, just as any taxation of railroad and telegraph lines does, but this is not a forbidden burden or interference." The determinative question here is answered in the American Manufacturing Company Case. The Supreme Court of Missouri in that case (270 Mo. 40) said of the tax: "We hold the tax in question is a tax upon the privilege of pursuing the business of manufacturing these goods in the city of St. Louis; that when the goods were manufactured the obligation accrued to pay the amount of tax represented by their production when it should be [fol. 443] liquidated by their sale by the manufacturer; that their removal from the city of St. Louis and storage elsewhere worked no change in this obligation; that their sale by respondent wherever they may have been stored at the time, whether it was done through its home office in New York or the office of its factory in St. Louis should have been reported in it's return to the license collector of the city of

St. Louis, and the amount included in fixing the amount payable on account of its license tax." The Supreme Court of the United States disposed of this case in the following language: "There is no doubt of the power of the state, or of the city, acting under its authority, to impose a license tax in the nature of an excise upon the conduct of a manufacturing business in the city. Unless some particular interference with Federal right be shown, the states are free to lay privilege and occupation taxes. Clark v. Titusville, 184 U. S. 329, 46 L. Ed. 569, 22 Sup. Ct. Rep. 382; St. Louis v. United R. Co., 210 U. S. 266, 276, 52 L. Ed. 1054, 1058, 28 Sup. Ct. Rep. 630. The city might have measured such tax by a percentage upon the value of all goods manufactured, whether they ever should come to be sold or not, and have required payment as soon as, or even before, the goods left the factory. In order to mitigate the burden, and also, perhaps to bring merchants and manufacturers upon an equal footing in this regard, it has postponed ascertainment and payment of the tax until the manufacturer can bring the goods into market. * * * In our opinion, the operation and effect of the taxing ordinance are to impose a legitimate burden upon the business of carrying on the manufacture of goods in the city; it produces no direct burden on commerce in the goods manufactured, whether domestic or interstate, and only the same kind of incidental and indirect effect as that which results from the payment of property taxes or any other and general contribution to the cost of government. Therefore, it does not amount to a regulation of interstate commerce." From the opinion of the court it appears that the case of Crew Levick Company, supra, relied on by the gas company here, was likewise relied on by the manufacturing company in opposition to the view of the court heretofore quoted—the court stating [fol. 444] that it is "so obviously distinguishable that particular analysis is unnecessary." The sales price of the goods on which the tax was levied, after they had been taken to other states would necessarily include the cost of transportation of the goods in interstate commerce. It will be seen that the court in the last mentioned case went farther than is necessary to go in upholding the tax in this case which only permits the tax to be levied on sales made within the state.

The conclusion, as I view it, to be drawn from a consideration and analysis of the cases of the Supreme Court of the United States in point, is that the states will be permitted to indirectly encroach on federal authority by their taxing powers. In a federal system there must be reciprocal give and take between the whole and the several parts. If there be any interference with interstate commerce in the practical application of the statute in this case it is only such an indirect and incidental burden as is sanctioned by the federal decisions. The question of whether the state has imposed unduly a burden by the method of imposition of this tax upon interstate commerce being the only question with which I am at variance with my brethren, and the effects flowing from an affirmative holding thereon, I content myself with the statement that, after due consideration of all questions involved in the appeal, my conclusion is that the statute under consideration, without being limited in its operation as interpreted by the Court, violates no provision of either State or Federal Constitutions, and therefore it becomes our duty to uphold and enforce it.

[fol. 445] In Supreme Court of Appeals of West Virginia

Concurring Opinion

Litz, President, concurring:

I concur in the opinion of the Court upholding the constitutionality of the statute, and am inclined also to the view expressed by Judge Woods that the levy of the tax on sales of gas by the plaintiff does not contravene the commerce clause of the Federal constitution. The opinion seems to question the right of States to levy any tax which would affect or burden interstate commerce. The decisions of the United States Supreme Court consistently hold that the States may by appropriate taxation indirectly burden interstate commerce. As pointed out by Judge Woods, the case of American Manufacturing Company v. St. Louis apparently goes farther than is necessary to uphold the statute under consideration, given a liberal interpretation.

[fols. 446-467] IN SUPREME COURT OF APPEALS OF WEST VIRGINIA

ORDER FILING PETITION FOR REHEARING AND SUSPENDING DECREE—October 21, 1926

[Title omitted]

Petitions for re-argument and rehearing having been filed in the six foregoing causes, under the provisions of the rules of this Court, said petitions are ordered docketed and the final judgments or decrees entered in said causes on a former day of the present term of this Court hereby are suspended until the further order of this Court.

Petition for rehearing, covering 20 pages, filed October 19, 1926, omitted from this print. It was denied and nothing more by order October 25, 1926.

[fol. 468] IN SUPREME COURT OF APPEALS OF WEST VIRGINIA

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—October 25, 1926

The Court, having maturely considered the petition for rehearing and re-argument in the foregoing cause, is of opinion to and doth hereby refuse the prayer of said petition, and doth order that the final judgment heretofore entered in said cause on a former day of the present term be made absolute and be certified as heretofore directed.

IN SUPREME COURT OF APPEALS OF WEST VIRGINIA

[Title omitted]

ORDER STAYING MANDATE

Upon an Appeal from and Supersedeas to a Decree of the Circuit Court of Kanawha County Pronounced on the 25th day of May, 1926

This day came the Hope Natural Gas Company, a corporation, by its attorneys, and informed the Court that it desired to present a petition to the Supreme Court of the United States for a writ of error or writ of certiorari, or both, to the decree of this Court entered in this cause on the 21st day of September, 1926, and made final by the order of this Court on this 25th day of October, 1926, and moved the Court for an order suspending the execution of said decree and to stay mandate herein for a period of ninety days from this date; which motion having been considered [fol. 469] by the Court, it is of opinion to and hereby doth grant a stay of thirty days from this date to the execution of the said decree entered on the 21st day of September, 1926, and that the mandate herein be stayed until the expiration of said thirty days from the date of this order.

IN SUPREME COURT OF APPEALS OF WEST VIRGINIA

[Title omitted]

ORDER GRANTING ADDITIONAL STAY—November 19, 1926

Upon an Appeal from and Supersedeas to a Decree of the Circuit Court of Kanawha County Pronounced on the 25th Day of May, 1926

This day came the Hope Natural Gas Company, a corporation, by its attorneys and moved the Court for an order extending the suspension of the execution of the decree of September 21, 1926, and to stay the mandate herein for a further period of thirty days from the expiration of the stay granted on the 25th day of October, 1926; upon con-

sideration whereof the Court is of opinion to and hereby doth grant a further stay of thirty days from the 24th day of November, 1926, to the execution of the said decree entered in this cause on the 21st day of September, 1926, and the manade herein is hereby stayed until the expiration of such additional thirty days.

[fol. 470] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 471] In Supreme Court of Appeals of West Virginia

[Title omitted]

Petition for Writ of Error and Order Allowing Same

To the Honorable William Howard Taft, Chief Justice of the United States:

Your petitioner hereby respectfully shows that on the 21st day of September, 1926, the Supreme Court of Appeals of West Virginia, entered its decree in the above-entitled matter sustaining the validity of Chapter 1 of the Acts of the First Extraordinary Session of 1925 of the Legislature of West Virginia, against the charge that the said statute was repugnant to and in violation of Article 1, Section 8, of the Constitution of the United States, and was repugnant to and in violation of the Fourteenth Amendment of the Constitution of the United States. That on the 25th day of October, 1926, the said Court refused a petition for rehearing in this case and entered its order denying such petition. That the said Court is the highest court of the State of West Virginia in which a decision in this suit could be had.

[fol. 472] Wherefore your petitioner applies under Section 237 of the Judicial Code for a Writ of Error from the Supreme Court of the United States to the Supreme Court of Appeals of West Virginia, and submits herewith its Assignment of Errors upon which it relies to establish its right to the said Writ of Error and to reverse the decision of the Supreme Court of Appeals of West Virginia.

John W. Davis, H. D. Rummel, Attorneys for the Petitioner.

And now, December 17th, 1926, on reading and considering the above petition and the assignment of error accompanying the same, it is ordered that a Writ of Error from the Supreme Court of the United State be allowed.

Wm. H. Taft, Chief Justice, assigned as Circuit Justice to the Fourth Circuit.

Bond for costs fixed at $1,000. Wm. H. T.

[fol. 473] In Supreme Court of Appeals of West Virginia

[Title omitted]

Assignments of Error

Now comes the plaintiff in error and respectfully submits that in the record, proceedings, decision and final judgment of the Supreme Court of Appeals of West Virginia, in the above entitled matter, there is manifest error, to wit:

1. The said Court erred in holding that Chapter 1 of the Acts of the First Extraordinary Session of 1925 of the Legislature of West Virginia is not in violation of Article I, Section 8, of the Constitution of the United States.

2. The said Court erred in holding that Chapter 1 of the Acts of the First Extraordinary Session of 1925 of the Legislature of West Virginia does not purport to tax, burden and regulate interstate commerce.

3. The said Court erred in holdiag that Chapter 1 of the Acts of the First Extraordinary Session of 1925 of the Legislature of West Virginia is not in violation of the Fourteenth Amendment to the Constitution of the United States.

4. The said Court erred in holding that Chapter 1 of [fol. 474] the Acts of the First Extraordinary Session of 1925 of the Legislature of West Virginia does not deprive the plaintiff in error of property without due process of law.

5. The said Court erred in holding that Chapter 1 of the Acts of the First Extraordinary Session of 1925 of the

Legislature of West Virginia does not deny to the plaintiff in error the equal protection of the laws.

6. The said Court erred in holding that Chapter 1 of the Acts of the First Extraordinary Session of 1925 of the Legislature of West Virginia does not violate Article X, Section 1 of the Constitution of the State of West Virginia, requiring that all taxes shall be equal and uniform.

7. The said Court erred in other respects apparent upon the face of the record.

John W. Davis, H. D. Rummel, Attorneys for Plaintiff in Error.

[fols. 475 & 476] Bond on writ of error for $1,000 approved; omitted in printing.

[fol. 477] In Supreme Court of Appeals of West Virginia

Writ of Error

United States of America, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the[1] Supreme Court of Appeals of the State of West Virginia, Greeting:

Because in the record, proceedings and judgment in a cause lately pending in Supreme Court of Appeals of the State of West Virginia, being the highest court of the said State in which a decision in the cause could be had, between Grant P. Hall, State Tax Commissioner of West Virginia, and Howard B. Lee, Attorney General of West Virginia, Appellants; and Hope Natural Gas Company, Appellee, wherein was drawn in question the validity of a [fol. 478] statute of a State, on the ground of its being

[1]The writ should be directed to the judges of the court of last resort whose judgment is to be reviewed, save where the record has been remitted to and remains in the lower court, in which event the writ may be directed to the judges of the lower court as a means of getting the record. See Atherton v. Fowler, 91 U. S. 143, 146; Sioux Remedy Co. v. Cope, 235 U. S. 197, 200.

repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of its validity;[2] it appears that the said Hope Natural Gas Company is entitled to have the said judgment reviewed by the Supreme Court of the United States; and it having presented a petition for a writ of error and an assignment of errors to that end;

And we being willing that error, if any hath occurred, should be duly corrected, and full and speedy justice done to the parties aforesaid, do command you that under your seal, distinctly and openly, you send the record, proceedings and judgment aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, and that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, so that the said Supreme Court may examine and consider the same and may cause further to be done to correct the error therein, if any hath occurred, as of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable William Howard Taft, Chief Justice of the United States, the twenty-third day of December, in the year of our Lord one thousand nine hundred and twenty-six.

Wm. R. Stansbury, Clerk of the[4] Supreme Court of the United States.

Allowed by[3] Wm. H. Taft, Chief Justice of the United States.

[fol. 479] Citation, in usual form, showing service on Fred O. Blue, omitted in printing.

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[2]If only one of these jurisdictional grounds exists in the case, strike out the other.

[3]The writ may be allowed by the chief justice or presiding judge of the state court whose judgment is to be reviewed or a justice of the Supreme Court of the United States.

[4]The writ may be signed and issued by the clerk of the district court of the United States for that district or the clerk of the Supreme Court of the United States.

[fols. 480 & 481] Return to writ of error omitted in printing.

[fol. 482] IN SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1926

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION BY PLAINTIFF IN ERROR OF PARTS OF RECORD TO BE PRINTED—Filed January 21, 1927

In acordance with the provisions of paragraph (9), rule 11 of this Court, the plaintiff-in-error here states and declares the points upon which it intends to rely and the parts of the record which it thinks necessary for the consideration thereof, to be as follows:

1. Chapter of the Acts of the First Extraordinary Session of 1925 of the Legislature of West Virginia, is void because in violation of Article 1, Section 8 of the Constitution of the United States. The said Act taxes burdens and regulates interstate commerce.

2. Chapter 1 of the Acts of the First Extraordinary Session of 1925 of the Legislature of West Virginia, is void because in violation of the Fourteenth Amendment of the Constitution of the United States. The said Act deprives the plaintiff-in-error of property without due process of law and denies to the plaintiff-in-error the equal protection of the laws.

[fol. 483] 3. Chapter 1 of the Acts of the First Extraordinary Session of 1925 of the Legislature of West Virginia, is void because in violation of Article X, Section 1 of the Constitution of the State of West Virginia. The said Act imposes a tax which is not equal and uniform.

A decision of all of these points involves the consideration of all the pleadings, and all the evidence, and the opinion of the trial judge and that of the Supreme Court of Appeals of West Virginia, and requires the printing of the entire record.

Dated, New York, N. Y., January 20, 1927.

H. D. Rummel, John W. Davis, Counsel for Appellants.

Legal service of the above, the statement of points and parts of the record to be printed is hereby accepted for and on behalf of the appellee this 20th day of January, 1927.

Fred O. Blue, Counsel for Appellee.

[fol. 484] [File endorsement omitted.]

Endorsed on cover: File No. 32,382. West Virginia Supreme Court of Appeals. Term No. 815. Hope Natural Gas Company, plaintiff in error, vs. Grant P. Hall, State Tax Commissioner of West Virginia, and Howard B. Lee, Attorney General of West Virginia. Filed January 6th, 1927. File No. 32,382.

FILED
APR 2 1927
WM. R. STANSBURY
CLERK

No. 815.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926.

HOPE NATURAL GAS COMPANY, *Plaintiff in Error,*
vs.
GRANT P. HALL, STATE TAX COMMISSIONER, ET AL., *Defendants in Error.*

IN ERROR TO THE SUPREME COURT OF APPEALS OF WEST VIRGINIA.

BRIEF FOR PLAINTIFF IN ERROR

JOHN W. DAVIS,
New York City
H. D. RUMMEL,
Charleston, W. Va.
Attorneys for Plaintiff in Error.

ARTHUR E. YOUNG
CHARLES POWELL
KEMBLE WHITE
ANTHONY F. McCUE
S. E. W. BURNSIDE
EDWARD M. BORGER
Of Counsel.

(32,382)

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Not yet officially reported.

Opinion contained in printed record herein, page 259.

Opinion of the Court of Common Pleas of Kanawha County, West Virginia, appears in printed record, page 238.

No. 815.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1926.

HOPE NATURAL GAS COMPANY, *Plaintiff in Error,*

vs.

GRANT P. HALL, STATE TAX COMMISSIONER, ET AL., *Defendants in Error.*

IN ERROR TO THE SUPREME COURT OF APPEALS OF WEST VIRGINIA.

BRIEF FOR PLAINTIFF IN ERROR

This case is here upon a writ of error (Judicial Code, Sec. 237, as amended by Act of February 13, 1925; 43 Stat. 937) to review a judgment of the Supreme Court of Appeals of West Virginia rendered on September 21, 1926. The opinion and judgment complained of appear in the printed record at pages 258 and 259. The case has not yet appeared in the official reports.

Questions Involved

The question involved is the constitutionality of the "Gross Sales License Tax Law" of the State of West Virginia (Ch. 1, Acts 1925, Extraordinary Session). The Bill asserts the said statute is "unconstitutional, illegal

and void, and its necessary operation and effect violates the rights of the plaintiff,"

> "(1) Under the Constitution of the United States of America in that it imposes directly and immediately a burden upon, and hampers and restricts commerce between the State of West Virginia and the State of Ohio and Commonwealth of Pennsylvania and other States in violation of Section 8, Article I; * * * in that the enforcement of said Act will deprive plaintiff of its property without due process of law, in violation of Article XIV of the Amendments to the Constitution of the United States; and in that said Act and the necessary effect and enforcement of the same will deny plaintiff the equal protection of the law, in violation of Article XIV of the Amendments to the Constitution of the United States." (R. 37.)

The decision of the Supreme Court of Appeals of West Virginia was in favor of the validity of the statute. (Opinion of the Court, R. 259.) In the syllabus of the case (which in West Virginia is prepared by the court and states the law of the case) it is said:

> "Chapter 1 of the Acts of the Legislature of West Virginia, passed at the Extraordinary Session, 1925, violates neither the state nor the federal constitution."

It will appear by reference to the order of the Court (R. 258) that the defendants were permitted to impose a tax upon the plaintiff under the act in question, though the Supreme Court of Appeals construed the act in a manner somewhat different from the views of the court of first instance. This will be discussed further in the argument herein.

STATEMENT OF THE CASE

This suit in equity was instituted in the Court of Common Pleas of Kanawha County, West Virginia, by the Hope Natural Gas Company against Grant P. Hall, State Tax Commissioner, and Howard B. Lee, Attorney General of West Virginia, for the purpose of enjoining said defendants from enforcing against the plaintiff the provisions of an act of the legislature of West Virginia, being chapter 1 of the Acts of the Extraordinary Session of 1925, and especially from collecting from the plaintiff the taxes purported to be levied by said act. The act in full is printed in the Record (p. 138, insert). By section 2-a thereof, the portion chiefly in question, there is imposed an "annual privilege tax,"

> "Upon every person engaging or continuing within this state in the business of mining and producing for sale, profit, or use, any coal, oil, natural gas, limestone, sand or other mineral product, or felling and producing timber for sale, profit, or use, the amounts of such tax to be equal to the value of the articles produced as shown by the gross proceeds derived from the sale thereof by the producer (except as hereinafter provided), multiplied by the respective rates as follows: coal, forty-two one-hundredths of one per cent; oil one per cent; natural gas, one and seventeen-twentieths of one per cent; limestone, sand or other mineral product, nine-twentieths of one per cent. The measure of this tax is the value of the entire production in this state, regardless of the place of sale or the fact that deliveries may be made to points outside the state."

The cause was heard in the Court of Common Pleas upon the bill and answer, with exhibits, and upon an agreed statement of facts in lieu of testimony. That court entered its decree on May 10, 1926, and filed a written opinion which is set out in the record herein, at page 238.

The Court of Common Pleas held that the act in question does violate Article I, Section 8, of the Constitution of the United States, because in practical operation and effect it would amount to a regulation of interstate commerce, and also held that injunction is the proper remedy to prevent the enforcement of the act. The decree enjoined the defendants from enforcing against the plaintiff section 2-a of the act, and because the act was held to be indivisible as to gas produced by the plaintiff, the collection of a tax under sections 2-c and 2-d of the act was also enjoined as to the gas so produced. The decree further declared the tax imposed by section 2-c (a sales tax) to be invalid in so far as it applied to gas purchased by the plaintiff and sold and delivered in interstate commerce, this having been conceded by the defendants. The further relief prayed by the bill was denied. An appeal from this decree was refused in due course by the Circuit Court of Kanawha County, West Virginia, and from this decree an appeal was taken by the defendants to the Supreme Court of Appeals of West Virginia, the court of last resort in the state, and the plaintiff filed its cross-assignments of error to the refusal of the trial court to grant the full relief prayed for. The Supreme Court of Appeals, on September 21, 1926, announced its opinion and entered the decree now complained of by the present writ of error. The opinion of the Court, and dissenting opinions, are found in the printed record herein at pages 259-275. (135 S. E. 582) A petition for rehearing was filed on October 21, 1926, and denied on October 25, 1926.

The order of the Supreme Court of Appeals (R. 258) reversed the decree of the Court of Common Pleas in so far as it enjoined the defendants from enforcing against the plaintiff the provisions of section 2-a by imposing a tax upon the gas produced by the plaintiff, based upon the value thereof "within the state and before it enters interstate commerce," and modified the decree of the trial

court so as to permit the imposition of such a tax. While the order itself does not direct how the value of the gas "before it enters interstate commerce" is to be ascertained, the opinion of the court announces principles upon this point for the guidance of the taxing authorities which we contend will operate to impose the burdens of the proposed tax as directly upon interstate commerce, and upon the receipts therefrom, as was sought to be done by the statute, if construed in literal accord with its language and without the aid of the construction adopted by the court.

In order that the Court may clearly see the nature of the tax sought to be imposed by the act in question, and its practical operation and effect as applied to the business of the plaintiff, it is necessary to look to the facts appearing in the pleadings and in the stipulation. These facts, so far as material, omitting detail and incidental matters, may be briefly summarized.

The Facts

(For convenience we refer to the Hope Natural Gas Company, plaintiff in error, as the plaintiff, and to the State Tax Commissioner and Attorney General of West Virginia as the defendants.)

The plaintiff, Hope Natural Gas Company, is a corporation organized under the laws of West Virginia, and has its principal office and place of business at Clarksburg, Harrison County, in said state. Its chief business is now and always has been the production and purchase in West Virginia of natural gas, and the transportation, sale and delivery of the major portion thereof, by means of a system of pipe lines, through and across the state of West Virginia to several points at the state line for further, continuous and uninterrupted transportation into Pennsylvania and Ohio, for use and consump-

tion in those states. The remainder of the gas so produced and purchased by the plaintiff, being the much smaller portion, is transported through the same system of pipe lines and is sold for use and consumption in West Virginia, or is used by the plaintiff in its own operations. (R. 63.)

The defendant, Grant P. Hall, is the state tax commissioner of West Virginia, and as such he is charged with the administration and enforcement of all the tax laws of the state, and is specifically charged by said Act of 1925 with the duty of adopting and promulgating rules and regulations for the administration of said Act. The defendant, Howard B. Lee, is attorney general of the State of West Virginia, and as such he is charged with the duty of giving legal advice to the state tax commissioner, assisting him in enforcing the tax laws of the state, and instituting, conducting and maintaining suits on behalf of the state for the enforcement of tax laws and other laws and statutes of the state. (R. 10.)

The Act of 1925, with the rules and regulations prescribed thereunder by the state tax commissioner, appears at length in the Record. (R. 138, insert.)

The state tax commissioner notified the plaintiff that it was subject to the taxes imposed by said act, and the rules and regulations prescribed thereunder, and furnished the plaintiff with the forms for making returns thereunder (R. 138), and demanded that the plaintiff make the required returns, and intends to collect from the plaintiff the taxes purported to be imposed by the act. (R. 12.)

The Business of the Plaintiff in Interstate Commerce

The development of the natural gas industry in West Virginia, and the plaintiff's business in particular, should be noted. Beginning about 1891, certain producers of petroleum in that state encountered large quan-

tities of natural gas. Within a few years the volume of this gas had become so tremendous that it hampered operations for oil, and the gas at that time was largely lost and wasted, because there was no adequate and ready market for the same at that time. Natural gas had been used in the cities of northeastern Ohio for lighting and heating purposes, and it was decided to attempt to transport the large quantities of gas obtained in West Virginia to these already existing markets for sale.

The plaintiff, Hope Natural Gas Company, was organized in 1898 by the beneficial owners of certain of the larger oil producing companies, for the purpose of producing and purchasing gas and transporting the same to the Ohio state line, where it was sold and delivered to the East Ohio Gas Company, which was organized by the same parties and at the same time to receive the gas and transport and deliver it to the cities of northeast Ohio. Later, by reason of the large quantities of gas discovered and produced by the plaintiff, the company constructed a pipe line to the Pennsylvania state line and began the sale and delivery of gas to the Peoples Natural Gas Company, a Pennsylvania corporation, which had been acquired by the same parties above mentioned, and which was engaged in supplying consumers of gas in and about Pittsburgh. (R. 13, 64-68.)

In 1910 the plaintiff acquired large additional properties, in connection with the properties theretofore acquired and operated by it, and entered into separate contracts with the Fayette County Gas Company for similar deliveries of gas to said company at the Pennsylvania state line, and with the River Gas Company for similar deliveries to it at the Ohio state line, for transportation into said respective states for sale and use therein, and also with the Manufacturers Light & Heat Company for similar deliveries of gas to it at certain points within the State of West Virginia, of which gas about 75% is transported by said last mentioned company in continuous

uninterrupted transit to points in said states of Ohio and Pennsylvania for sale and use therein, the remainder of the gas so sold and delivered to said Manufacturers Light & Heat Company being marketed by it in West Virginia. (R. 17, 22.)

The essential terms of the contracts with the various companies above named are set out in the Record, pages 74-99. These show that the plaintiff is obligated thereby to produce and purchase natural gas in West Virginia and to so transport and deliver the same by pipe lines into the states of Ohio and Pennsylvania in the manner described, the companies mentioned receiving the gas as it passes out of the States of West Virginia, or, in the case of the Manufacturers Light & Heat Company, receiving the gas within the state and immediately transporting it out of the state without interruption or break in its transit, for distribution and consumption in Ohio and Pennsylvania. And by virtue of these contracts the plaintiff is obligated to so produce, purchase, transport and deliver such gas in interstate commerce, and for use in states other than West Virginia, so long as natural gas can be produced in sufficient quantities in West Virginia, according to the terms of some of these contracts, and for many years to come, according to the terms of others.

The companies above named are dependent upon the plaintiff chiefly, and in the case of most of them, almost entirely, for their supply of natural gas for distribution to more than 650,000 of their domestic consumers.

The plaintiff has also, chiefly since 1910, sold and distributed gas for consumption in the State of West Virginia, and has acquired local distributing systems and is engaged in that state in the public service of supplying gas to consumers thereof. Under the laws of the state it is a public utility, and its rates and service are subject to regulation by the state, in respect to such local service. The volume of gas so sold and delivered by

the plaintiff for consumption within the state is less than 20% of the total volume of gas produced and purchased by the plaintiff. (R. 68.)

The plaintiff, in carrying out the purposes of its incorporation, and in compliance with the contracts aforesaid, has drilled and purchased a great number of gas wells, and has acquired large acreage of gas territory, both developed and undeveloped. To comply with its contracts it has maintained and will be compelled to maintain in the future a continuous supply of gas, running from the respective wells where produced, through the transportation system of the plaintiff, to the state lines of Ohio and Pennsylvania, and on into those states without interruption of flow, for distribution and use therein. (R. 19-22, 102.)

At the time the plaintiff company was organized, in 1898, it owned but few gas wells and gas leases. It has expanded and extended its business since that time to such an extent that, for the year ending June 30, 1925, it was the owner of 3,178 producing gas wells and of 860,750 acres of oil and gas leases, operated and unoperated, situated in twenty-five counties of West Virginia. It not only produces natural gas from its own leases, but it also is the largest purchaser in the state of natural gas produced by others. For the year ending June 30, 1925, it produced 23,194,711,100 cubic feet of gas, and purchased 25,456,947,000 cubic feet, making a total volume of 48,651,658,000 cubic feet of natural gas produced and purchased, transported and sold by the plaintiff, not taking into account the free gas delivered to its lessors, usually at or near the respective wells, or gas used by it in its operations, all of which aggregated approximately 2,000,000,000 cubic feet.

In order to transport the gas to market, plaintiff has built a transportation system which is used exclusively for that purpose. It may be divided into (a) gathering lines, (b) compressing stations, and (c) marketing or

trunk lines. The gathering lines are connected with the casings in the various wells producing natural gas in the fields. They converge at central points in the fields operated by the company, at which points of convergence they deliver natural gas into the marketing or trunk lines. Plaintiff has installed 42 compressing stations, distributed over 25 counties in the state, and takes the gas from the gathering lines and delivers it to the marketing or trunk lines. By their operation these compressing stations maintain a constant and uninterrupted flow of natural gas under uniform pressure into the marketing lines of the company. The marketing or trunk lines extend from the points of connection with the gathering lines to the various places at which the gas is delivered in West Virginia, and at the several state lines. At pages 104-110 of the Record there is shown in detail the method of handling gas in this elaborate system of trunk lines by which the inter-connection is complete and the processes by which any point of delivery may be reached from any other point of the system.

All of the gas purchased and produced by the plaintiff eventually reaches and enters its main transportation system, except only that small portion which is used in the field for the company's operations, for free gas consumers, or for sale to isolated consumers on its lines. All sales and deliveries of gas made to cities and towns in West Virginia, or at the state line of West Virginia, are made from the gas continually moving through the main transportation system of the company. (R. 102-110.)

For the gas sold and delivered by the plaintiff in interstate commerce, the record shows that at the time this suit was instituted it was receiving the following prices: (R. 74-99.)

From East Ohio Gas Company.....37½c per M. cu. ft.
From Peoples Natural Gas Company.....37½
From Manufacturers Light & Heat Co.....32.932
From Fayette County Gas Company.....31
From River Gas Company.....35

Since by far the larger part of this gas is sold to the two companies first named, a computation will show that the average price received for all gas transported and sold in interstate commerce by the plaintiff is considerably more than 36 cents. (R. 166-167.)

The prices paid by the plaintiff for gas purchased by it are shown at pages 162-163 of the Record. In the case of purchases made at or near the wells where produced, the prices range from a minimum of 8½ cents to a maximum of 15 cents, the smaller prices being paid in counties of the largest production. In the case of purchases made from a producer who collects and transports the gas to a delivery point, the prices range from 14 cents to 25 cents. The record also shows that the prices paid by the plaintiff for gas are substantially higher than those paid by other purchasers in the state, except in the case of the Manufacturers Light & Heat Company, which makes purchases in territory near the large markets, where competition is keener, and where also the supply of gas is diminishing rapidly because the fields are old.

Without attempting to average the prices paid by the plaintiff for gas at the wells, or to deduce from this data a fair normal price for such gas, we call attention to the fact that between the highest price paid for gas at the point of production, namely, 15 cents per thousand cubic feet, and the average prices received at the state line from sales in interstate commerce, there is a clear margin of more than 21 cents, and that this enhancement in value must be attributed to the transportation, delivery and sale of the gas to that point and the greater demand for gas in the markets so supplied; in other words, the enhanced value is due solely to the transportation and sale of the gas in interstate commerce. At the rate at

which such gas was marketed in 1925 this sale in interstate commerce would produce gross receipts, in addition to the value of the gas when produced, of more than $10,000,000, which the state of West Virginia by the act in question proposes to tax.

It appears that the average price paid by the plaintiff for all purchased gas during 1925 was slightly in excess of 17 cents per thousand cubic feet, but this includes a large quantity of gas which was collected by the producers and transported to delivery points. Thus the purchase price of this gas includes an indeterminate amount for the transportation thereof.

It also appears that the average price received by the plaintiff in 1925 for gas distributed by it in West Virginia as a public service corporation was 30.457 cents per thousand cubic feet. These prices are fixed by the Public Service Commission of West Virginia, and are assumed to be based upon the cost of producing, transporting and distributing the gas to public service consumers, plus a reasonable rate of return to the company upon the fair value of the property devoted to that service. The company supplies more than 22,000 consumers of gas in the state, and delivers them approximately 6,000,000,000 cubic feet per year.

The Taxation of the Plaintiff

The methods by which the property and franchises of the plaintiff are taxed by the State of West Virginia, and the extent of such taxation, are shown at pages 24-26 and 69-74 of the Record. The taxes paid by the plaintiff for the year 1925 are as follows:

(a)	Property tax	$670,718.62
(b)	Corporation license tax (on capital stock, year ending June 30, 1925)	5,440.00
(c)	Public Service Commission assessment	5,062.50
(d)	Gross sales tax to June 30, 1925	22,513.27

(e)	Corporation tax, Parkersburg	10.50
(f)	Franchise tax, Parkersburg	7,542.77
		$711,287.66

All the above taxes are yet in existence and would be exacted in addition to those imposed by the act in question herein, except the item (d) above, gross sales tax, which may be regarded as the predecessor of the present proposed tax. Of the property taxes above shown, the major part is received by the counties, districts and municipalities in which the property is located, the rate of levy for general state purposes being small in comparison with local taxes.

Attention is called to the fact that the basis prescribed by law for the assessment of the property of the plaintiff for taxation is the true and actual value, which includes going value and every other element of value which it contains. The property of the plaintiff, like that of other public utilities, is assessed by the board of public works of the state, and for the year 1925 its valuation is $37,500,000, which is apportioned among the various taxing districts where the property is situated. The corporation license tax mentioned above (b) is a franchise tax upon the privilege of corporate existence, and is an annual tax based upon the amount of authorized capital stock. The Public Service Commission assessment is a special exaction from public service companies for the support of the Commission.

A large part of the value which inheres in the gas wells and properties which plaintiff owns, is created and given to them by the transportation system hereinbefore described, and by the access which this gives to extra-state markets for the gas. This was recognized by this Court in the case of *Pennsylvania* v. *West Virginia*, 262 U. S. 553, 587.

The Restrictive Policy of the State

It clearly appears from the record that the peak of gas production in West Virginia was reached about 1916. The fields of the state have been producing for more than thirty years, and they must henceforth diminish in quantity of flow until the gas is gone. The production at this time is less than sixty per cent of what it was in 1916. In that year 67 per cent of the total production was sold outside of the state, while the percentage today is 60. About the same time large increases in cost of production occurred, and corresponding increases in the prices of gas. (R. 119, 125.)

In view of these conditions, the State of West Virginia at least as early as 1919, entered upon a legislative policy designed to limit or prevent the exportation of natural gas from the state. This policy has been clearly evinced by the enactments since that time dealing with the natural gas business. These are described in the bill and set out in the stipulation of facts, and the plaintiff charges that the act in question in this suit is simply the most recent of such enactments having for its purpose the carrying out of the same unlawful design.

The first act was the "Steptoe Law" (R. 168), passed at the regular session of the legislature of 1919, which provided that every person engaged in furnishing natural gas for public use should to the extent of his supply of gas produced in the state furnish for public use within the state a supply of gas reasonably adequate for all consumers. With the decreasing supply in the state, and the increasing demand, this would immediately have curtailed the exportation of gas and soon would have caused a cessation thereof. In litigation instituted by adjoining states, this act was declared unconstitutional by this Court. *Pennsylvania* v. *West Virginia*, 262 U. S. 553.

The next act in the series complained of was the Transportation Act, passed at the extraordinary session of the

legislature in 1919. (R. 174, insert.) This act imposed a tax upon every person engaged in transporting oil or gas by means of pipe lines in this state, at the rate of two cents for each barrel of oil, and one-third of one cent for each one thousand cubic feet of gas. It was found that the major part of this tax was imposed upon oil and gas moving in interstate commerce, and the Supreme Court of Appeals of West Virginia declared the act unconstitutional and void in toto, after this Court had held that the state might reach by taxation only such oil or gas as was transported from one point in the state to an ultimate destination in the same state. *Eureka Pipe Line Co.* v. *Hallanan*, 257 U. S. 265; *United Fuel Gas Co.* v. *Hallanan*, 257 U. S. 277; *Hallanan* v. *Eureka Pipe Line Co.*, 261 U. S. 393.

The state did not contend in the last mentioned cases that the gas companies were not engaged in the transportation of gas, as the defendants seem to assert in this case, but on the contrary, the position of the state then was that the companies were taxable under the act of 1919, for the sole reason that they were engaged in such transportation. The pleadings and extracts from the brief of counsel for the state in those cases are made parts of the stipulation herein to show the position of the state at that time. (R. 133-138.)

The present act, the plaintiff charges, is merely a continuation of the State's unconstitutional efforts to tax the interstate transportation of natural gas, and if possible prevent the exportation thereof from the state.

SPECIFICATION OF ERRORS ASSIGNED AND TO BE URGED

The plaintiff in error assigns the following errors in the order and decree of the Supreme Court of Appeals of West Virginia.

FIRST: The said Court erred in holding that Chapter 1 of the Acts of the First Extraordinary Session of 1925

of the Legislature of West Virginia is not in violation of Article I, Section 8, of the Constitution of the United States.

SECOND: The said Court erred in holding that Chapter 1 of the Acts of the First Extraordinary Session of 1925 of the Legislature of West Virginia does not purport to tax, burden and regulate interstate commerce.

THIRD: The said Court erred in holding that Chapter 1 of the Acts of the First Extraordinary Session of 1925 of the Legislature of West Virginia is not in violation of the Fourteenth Amendment to the Constitution of the United States.

FOURTH: The said Court erred in holding that Chapter 1 of the Acts of the First Extraordinary Session of 1925 of the Legislature of West Virginia does not deprive the plaintiff in error of property without due process of law.

FIFTH: The said Court erred in holding that Chapter 1 of the Acts of the First Extraordinary Session of 1925 of the Legislature of West Virginia does not deny to the plaintiff in error the equal protection of the laws.

ARGUMENT

The points of law and fact which will be urged as grounds for reversal of the judgment of the Supreme Court of Appeals of West Virginia may be summarized as follows:

I. The Act in question is void because in violation of Article I, Section 8, of the Constitution of the United States. The said Act taxes, burdens and regulates interstate commerce.

II. The Act in question is void because in violation of the Fourteenth Amendment of the Constitution of the United States. The said Act deprives the plaintiff in error of property without due process of law, and denies to the plaintiff in error the equal protection of the laws.

I

The Act in question is void because in violation of Article I, Section 8, of the Constitution of the United States. The said Act taxes, burdens and regulates interstate commerce.

The Act of the Legislature of West Virginia imposing the taxes whose validity is drawn in question herein, is Chapter 1, First Extraordinary Session of 1925, passed June 5, 1925, and in effect July 1, 1925. The pertinent provisions of the Act are as follows:

> "Sec. 2. That from and after the thirtieth day of June, one thousand nine hundred twenty-five, there is hereby levied and shall be collected annual privilege taxes against the persons, on account of the business activities, and in the amounts to be determined by the application of rates against values or gross income, as the case may, as follows:
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> "Sec. 2-a. Upon every person engaging or continuing within this state in the business of mining and producing for sale, profit, or use, any coal, oil, natural gas, limestone, sand or other mineral product, or felling and producing timber for sale, profit, or use, the amounts of such tax to be equal to the value of the articles produced as shown by the gross proceeds derived from the sale thereof by the producer (except as hereinafter provided), multiplied by the respective rates as follows: coal, forty-two one-hundredths of one per cent; oil, one per cent; natural gas, one and seventeen-twentieths of one per cent; limestone, sand or other mineral product, nine-twentieths of one per cent. The measure of this tax is the value of the entire production in this state, regardless of the place of sale or the fact that deliveries may be made to points outside the state.
>
> "Sec. 2-c. Upon every person engaging or continuing within this state in the business of selling

any tangible property whatsoever, real or personal, (not including, however, bonds or other evidence of indebtedness, or stocks), there is likewise hereby levied, and shall be collected, a tax equivalent to two-tenths of one per cent of the gross income of the business; * * *

"Sec. 2-d. Upon persons engaging or continuing within this state in their respective businesses, there is likewise hereby levied and shall be collected, taxes on account of the business engaged in equal to the gross income of the business multiplied by the respective rates as follows: * * * companies operating pipe lines carrying oil or gas, one per cent; * * * other public service companies or utilities, two-fifths of one per cent. There shall be excepted from the gross income so to be taxed, so much thereof as is derived from business conducted in commerce between this state and other states of the United States, or between this state and foreign countries.

"Sec. 2-g. Upon every person engaging or continuing within this state in any business not included in the preceding sections, there is likewise hereby levied, and shall be collected, a tax equal to three-tenths of one per cent of the gross income of any such business.

"Nothing herein contained shall be construed so as to require the use of any gross income in the measure of the tax levied under sections 2-*c*, 2-*d*, 2-*e*, 2-*f* and 2-*g* of this act that has been included in the measure of the tax levied under the preceding sections hereof."

It may be noted that the title of the Act provides for a tax upon "the privilege of engaging in certain occupations," and the following definitions are set out in section one:

" '*Person*' * * * includes any individual, firm, co-partnership, joint adventure, associations, cor-

poration, trust, or any other group or combination acting as a unit," * * *

"*'Gross income'* means the value proceeding or accruing from the sale of tangible property (real or personal), or service, or both, and all receipts, actual or accrued, by reason of the investment of the capital of the business engaged in, including interest, discount, rentals, royalties, fees or other emoluments however designated and without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest or discount paid, or any other expense whatsoever; and without any deductions on account of losses."

"*'Gross proceeds of sales'* means the value proceeding or accruing from the sale of tangible property without any deduction on account of the cost of property sold, expenses of any kind, or losses."

Section 2-h provides for a deduction of $10,000 in all cases from the value or gross income to be taxed, referring to the same as "an exemption of ten thousand dollars of the amount of such values or gross income."

Section 13 provides:

"The tax imposed by this act shall be in addition to all other licenses and taxes levied by law as a condition precedent to engaging in any business taxable hereunder, except as in this act otherwise specifically provided."

The state tax commissioner, in his regulations promulgated under the provisions of the Act, (R. 138, insert), prescribes as follows:

"Sec. 6-a. The gross sales tax upon every person engaging or continuing within West Virginia, in the business of mining and producing for sale, for profit, or use, any coal, oil, natural gas, limestone, sand or other mineral product, or felling and producing timber for sale, profit, or use, is an amount

equal to the percentages of the value of the articles produced, set out below, as shown by the gross proceeds of sales (except as provided below under the head of special provisions—relating to producers under the conditions recited), regardless of whether sale was made within or without West Virginia or whether sold at wholesale or retail; an exemption at the rate of $10,000 annually to be deducted from such gross proceeds of sales before computing the tax.

"The following exemptions are also allowed:

"Freight charges, estimated or actual, if such charges have been added to the price from the point of shipment, (taxpayer's shipping point) to the point of delivery and such charges have been included in invoice to the buyer.

"Cash discounts, if shown on the face of the invoice, and actually deducted by the buyer."

Under Section 2-a of the Act complained of, a tax is sought to be levied against the plaintiff in error, amounting to 1.85% of the value of the natural gas produced by it, "*as shown by the gross proceeds derived from the sale thereof by the producer.*" The act specifically provides that the measure of the tax is "*the value of the entire production in this state, regardless of the place of sale or the fact that deliveries may be made to points outside the state.*"

While denominated a "privilege tax" upon the business of producing natural gas, it is seen that the tax is imposed directly upon the gross proceeds of the sale of the gas. Since more than 80% of the gas sold by the plaintiff in error is in interstate commerce, this law would levy a direct tax upon the gross receipts of such commerce. The plaintiff in error contended, therefore, in the lower courts, that the tax sought to be imposed by the Act was illegal and void, because it imposed a bur-

den upon interstate commerce, in violation of the Constitution of the United States.

It is hardly necessary here to repeat the arguments made below upon this point, because both the state courts agreed that a tax levied as indicated would in fact violate the Constitution. The Court of Common Pleas held that the act would operate to impose a direct tax upon the receipts of interstate commerce, and that section 2-a is indivisible, and therefore enjoined the enforcement of that section in toto, as against the plaintiff in error. The Supreme Court of Appeals indicated the same view in its opinion (R. 268):

> "The practical operation of the statute, as contended for by defendants, would be that the state of West Virginia would exact from the plaintiff $1.85 of every $100 it received from the sale of its gas in Ohio and Pennsylvania. This would be a direct burden on interstate commerce."

That the Supreme Court of Appeals carefully weighed the statute in this respect and gave consideration to the decisions of this Court upon the question, is shown by the following quotation from the opinion (R. 267):

> "Throughout a century of attempted municipal encroachment on federal authority, the Supreme Court has trumpeted the inhibition that a state cannot lay a direct tax on the gross proceeds derived from interstate commerce, except where such tax is in lieu of all other taxes and amounts to no more than the ordinary tax on property. Postal Tel. Co. v. Adams, 155 U. S. 688, 15 S. Ct. 268, 360, 39 L. Ed. 311; U. S. Express Co. v. Minn., 223 U. S. 335, 32 S. Ct. 211, 56 L. Ed. 459. It is true that a modification of this rule is indicated in State Tax on Ry. Gross Receipts, 82 U. S. (15 Wall.) 284, 21 L. Ed. 164; Maine v. Grand Trunk R. Co. 142 U. S. 217, 12 S. Ct. 121, 163, 35 L. Ed. 994; and Ficklen v. Shelby County, 145 U. S. 1, 12 S. Ct. 810, 36 L. Ed. 601. But the tax receipts decision was dis-

> approved in Phila. & S. M. Co. v. Pennsylvania, 122 U. S. 326, 342, 7 S. Ct. 1118, 30 L. Ed. 1200; the Maine Case was set apart as 'the extreme case' in Galveston H. & S. A. R. Co. v. Texas, 210 U. S. 217, 28 S. Ct. 638, 52 L. Ed. 1031; and in Crew Levick Co. v. Pennsylvania, 245 U. S. 298, 38 S. Ct. 126, 62 L. Ed. 295, the Ficklen decision was destroyed as a precedent by its characterization as 'exceptional'. Crew Levick Co. v. Pennsylvania, supra, Fargo v. Mich., 121 U. S. 230, 7 S. Ct. 857, 30 L. Ed. 888, Phila. & S. M. Co. v. Pennsylvania, supra, Galveston H. & S. A. R. Co. v. Texas, supra, and other federal decisions deny the right of the state, in express terms, to tax the gross proceeds derived from interstate commerce, when the property of the corporation is otherwise taxed, as it is in the present case. Commenting on Phila. & S. M. Co. v. Pennsylvania, the Supreme Court said in the Galveston Case; 'We regard this decision as unshaken and as stating established law.' It is a tradition of our court to follow, not exceptional or extreme decisions, but those which are unshaken and which state established law."

What the Supreme Court of Appeals proceeded to do, however, after having thus given its allegiance to the rule so thoroughly established, was to attempt to make the statute constitutional by construction. It said (R. 262-3):

> "If the taxation value of the products named in the statute be limited to their value in the state, and before they enter interstate commerce, the statute does not manifest a purpose to violate article 1 of the Federal Constitution, and we so hold."

In thus attempting to create a measure of the tax other than that fixed by the legislature, or to authorize the creation of one, we think the Court adopted a construction which does violence both to the express language of the statute and to the plain intent of the legisla-

ture. Certainly, its construction is opposed to that adopted by the state tax commissioner in his rules and regulations for the enforcement of the act (R. 138), opposed to the construction contended for by the defendants in their answer herein (R. 43), and opposed to the arguments made by counsel in both the lower courts. We understand, however, that this Court is not here concerned with questions of construction, but that it will take the statute as construed by the state courts and determine whether, as so construed, it violates the Constitution of the United States. We contend that the opinion of the Supreme Court of Appeals leaves the act in point of legality no better than it found it.

Natural gas at the point of production, in the fields where the operations of the plaintiff in error are conducted, has a market value ranging from 8½ to 15 cents per thousand cubic feet, and the plaintiff in error receives for its gas sold in interstate commerce in excess of 36 cents per thousand cubic feet. The value of the gas, either at the point of production or at the point of sale, is a matter of fact, and can be ascertained by the usual methods of ascertaining facts for purposes of taxation. Since the Supreme Court of Appeals discards the measure of the proposed tax adopted by the legislature, let us see what is the measure which it substitutes or permits to be substituted therefor.

The Supreme Court of Appeals is upon unassailable ground, so far as the commerce clause is concerned, when it asserts the power of the state to tax the value of natural gas within the state, and before it enters interstate commerce. The language of the Court carried into its order is:

> "That the decree * * * be and the same hereby is modified and corrected so as to permit defendants to impose and enforce against the plaintiff a tax, under said section, upon the natural gas so produced by it, based upon the value thereof with-

> in the State and before it enters upon interstate commerce." (R. 258.)

The statute, however, directs that this value shall be ascertained not by any of the customary methods of appraisal, but solely "as shown by the gross proceeds derived from the sale thereof by the producer," * * * "regardless of the place of sale or the fact that deliveries may be made to points outside the state." This language the Supreme Court of Appeals is powerless to expunge, either by construction or otherwise. It takes the last sentence of Section 2-a of the Act, beginning, "The measure of this tax is the value of the entire production in this state" etc., and makes it read "The measure of this tax is the value *in this state* of the entire production," but further than this it cannot go. It is still necessary under the Act to ascertain the gross proceeds derived from the sale of gas by producers engaged in interstate commerce "regardless of the place of sale"; and only when from this there are deducted all increments of value due to the sale in interstate commerce is there any gross total arrived at that falls within the taxing power of the state.

The Act makes no provision for any such deductions. The Court would seek to supply the omission. When we look to the decision and to the language of its opinion given as a guide to the state taxing authorities it becomes at once clear that it has failed in the effort, and that no legal rule has been announced by which there may be ascertained the value of the plaintiff's gas "before it enters interstate commerce."

The state taxing authorities are left to enforce the act as to the plaintiff in such manner as they see fit. The statute itself provides (R. 138):

> "The administration of this act is vested in and shall be exercised by the state tax commissioner, who shall prescribe forms and reasonable rules of

> procedure in conformity with this act for making of returns and for the ascertainment, assessment and collection of the taxes imposed hereunder; * * *" (Sec. 16.)

While the Court, as we have said, did not in its formal order direct the tax commissioner as to how the value of plaintiff's gas "before it enters upon interstate commerce" is to be ascertained, the opinion points out the method which the Court assumes will be followed. It informs the taxing authorities how to proceed, without giving binding directions. Not, indeed, with entire frankness, but yet with a considerable degree of clarity, emphasized by re-iteration, there is set out a scheme of valuation whereby the tax may be applied to the business of the plaintiff in error in such manner as to reach the major values created by the sale of the gas in interstate commerce, while still expressing the intent not to do so.

At every point where the Supreme Court of Appeals approaches this question in its opinion, it either holds explicitly or takes for granted that the difference in value of the plaintiff's gas "before it enters upon interstate commerce" and at the point of sale at the state line, is measured by the *cost of transportation* between the two points. This fallacy runs through the entire opinion of the Court, and will result, and no doubt was intended to result, in the fixing of a tax upon the plaintiff's gas, based upon the proceeds of sale in interstate commerce, with a deduction of some indeterminate amount for assumed cost of transportation. This we contend does not meet the constitutional requirement that interstate commerce must be kept inviolate from state regulation, through taxation or other means.

We quote from the Court's opinion some of the pertinent passages upon this point:

> "Consequently, we are warranted in presuming that the legislature did not mean to include, as an

> element of value, *so much of the gross proceeds of the sale of an article in interstate commerce as is represented by the cost of transportation,* and we restrain the operation of the statute accordingly." (R. 262.)

Here is a clear holding that the legislature may tax the entire gross proceeds of interstate commerce, except only so much thereof as represents the cost of transporting the commodity to the extra-state market. This results from a fallacious concept. It presents an inapt method of ascertaining the value of the commodity "before it enters upon interstate commerce," and one of such apparent circuitousness as to require explanation. To this end the Court proceeds:

> "If the sale of a commodity produced in this state imposes on the seller delivery in another state, then the sale price necessarily includes the cost of the delivery. Such sale price would not reflect the worth of the commodity in the state, but the *worth within the state plus the cost of transportation.* If the taxation value of the products named in the statute be limited to their value in the state, and before they enter interstate commerce, the statute does not manifest a purpose to violate article 1 of the Federal Constitution, and we so hold." (R. 262.)

This re-iterates that the difference between the value of the gas at the point of production and at the point of delivery at the state line consists solely of the cost of transportation. Again the Court says:

> "It may be admitted, as defendants contend, that the 'incidental facility of transportation' increases the value of the gas before it enters the pipe lines. Such an admission, however, in no wise disturbs the fact that the average price received by plaintiff for gas sold without the state is approximately six cents higher than the average (not the occasional or exceptional) price of gas

> sold by plaintiff within the state. Neither does the admission alter the fact *that it necessarily costs plaintiff something to transmit the gas from the place of production or purchase to the state line, and that the cost of transmission is included in the sales price.*" (R. 266.)

The Court here falls into a further unwarranted assumption based upon the fact that the average price received by the plaintiff in error for the gas distributed by it in West Virginia in the public service, is approximately 30 cents per thousand cubic feet. It apparently assumes that the difference between this sum and the price received at the state line, 36 cents per thousand cubic feet, represents approximately the cost of transporting the gas to the state line. This assumption is at wide variance with the facts, and its presence in the Court's opinion, constituting a guide to the action of the taxing authorities of the state, makes it destructive of the rights of the plaintiff.

This part of the opinion is particularly prejudicial when read in connection with the concluding paragraph, which says that the defendants "may not treat the gross proceeds of plaintiff's sales outside the state as the worth of its gas within the state, but that they may enforce the act upon the value thereof within the state, and before it enters interstate commerce." This might be taken as an adjudication that thirty cents represents the actual value of the gas "within the state and before it enters interstate commerce", but of course it is utterly untrue in point of fact. (See Record pp. 121, 124.)

The average price of 30.457 cents per thousand cubic feet, received by the plaintiff in error for its gas sold to public service consumers within the state of West Virginia, also necessarily includes the cost of transportation. In point of fact, there is included in this price in some instances as much expense of transportation as is included in the prices received by the company at the state line.

What the Court is ostensibly trying to reach is the value before transportation, and obviously the thirty cents paid by West Virginia consumers can not fix that value. In the sales price to public consumers, there is also included the cost of distribution to the houses of the consumers, the cost of local service and collecting accounts, and all the numerous items which enter into the making of a public service rate. It is perfectly apparent that no fair comparison can be made between prices fixed by the Public Service Commission for such service, and the prices received by the plaintiff in error in totally disconnected and unregulated markets outside the state. The difference in such prices could by no possibility measure the cost of transportation.

Says the Court, further:

> "By parity of reasoning, we can as well say that the only reason for permitting consideration of the price plaintiff receives for delivering gas through its transmission system to another state is get the true value of the gas within the state before it enters interstate commerce, and that purpose is not to open to taxation interstate commerce itself." (R. 266.)

The Court is here referring to an expression of this Court in the case of *Wallace* v. *Hines*, 253 U. S. 66, 69, where it is said that "The only reason for allowing a state to look beyond its borders when it taxes the property of foreign corporations is that it may get the true value of the things within it, *when they are part of an organic system of wide extent, that gives them a value above what they otherwise would possess.* The purpose is not to expose the heel of the system to a mortal dart—not, in other words, to open to taxation what is not within the state." But the Court clearly misconceives the effect of this expression. It is followed immediately in the opinion quoted from these words: "Therefore no property of such interstate road situated elsewhere can be taken into account

unless it can be seen in some plain and fairly intelligible way that it adds to the value of the road and the rights exercised in the state." We see no analogy or parity of reasoning between such a case and the proposition that the gross receipts from interstate commerce may be taken as a measure of the value of plaintiff's gas within the state. The Court below would ascertain and use the gross sales price of the gas as one step in fixing its value "within the state and before it enters upon interstate commerce"; but the opinion points out no connection between the sales price and such value within the state, though it plainly manifests the purpose of the Court that the value to be taxed shall be reached by deducting from the gross sales price only the cost of transportation.

Now, what are the elements which contribute to the difference in value of gas at the point of its production and at the point of its sale in a distant state? In the first place, it is submitted that the value at both points is governed primarily by the supply and demand at those points, and that there is no fixed or necessary relation between the values at the two points at a given time. It must be remembered that West Virginia does not and cannot consume more than 40 per cent of the gas produced in the state. The demand at the points of production is 60 per cent less than the supply. On the other hand, the state is surrounded by populous industrial communities where the value of gas is known and the demand for it is great. Hence the incentive to interstate trade in the commodity. The markets at all points are in some degree competitive, and sometimes highly so. The extent of the demand at a given point, therefore, in connection with the available supply at that point, fixes the price, and, therefore, the market value.

The possession of a pipe line system by the owner of gas may give him access to better markets in other states. While the gas in West Virginia may have a definite and fixed value, the same gas transported to the extra-state

market may have a value not at all commensurate with the actual cost of transmission. Of course, the proximity of the production to such pipe lines, and the presence or absence of competitive buying, may enter into the market value of the gas at the point of production. That the gas has an ascertainable market value at the point of production is obvious, but it is not to be deduced from the sale value at the point of consumption or at the state line.

Moreover, the lower court assumes that the plaintiff in error shall transport its gas *at cost*. In other words, to ascertain the value at the well, the Court would deduct from the gross sales price at the state line only the actual cost of transportation between the two points. Needless to say, no owner of a pipe line system, such as we have described, can be expected to purchase or create that system in order to transport natural gas for himself or for others at actual cost; neither should he be compelled to do so. He is entitled to a profit on this service and the property employed therein. The advantage which the possession of such a system gives the owner, belongs to him and is a property right. Is it not apparent that the lower court would treat these pipe lines for all practical purposes as public utilities, and would require them to transport gas at cost—something the state has never attempted to do with a public utility?

Whatever the elements which enter into the difference in value at the place of production and at the place of sale, it seems clear that to base the tax upon the gross receipts from interstate commerce, with a deduction of the mere estimated cost of transportation only, ignores all other possible elements of value accruing from such interstate commerce, and operates to impose the burden of the tax upon such commerce. The values to be taxed by the state certainly cannot include any element derived from the introduction of the product into interstate commerce. To do so would be to tax such commerce no less effectively than if the gross sum were left intact.

If the entrance of this gas into interstate commerce, thus receiving the benefit of the extra-state demand and market, enhances the receipts from sales, all such enhancement would be subject to tax under the Court's scheme of valuation, because it deducts nothing from the gross receipts except the bare cost of transportation. This would amount to nothing more or less than taxing the gross receipts from interstate commerce, under the guise of a privilege tax upon production.

If the opinion of the lower court be sound in holding that the state of West Virginia may tax the plaintiff in error's gas before it enters interstate commerce, it must be upon the assumption that the values by which the tax is measured are ascertained actually and in fact before the gas enters such commerce and its value is thereby affected.

It is respectfully submitted that the state, in imposing any tax measured by the value of property, can not constitutionally fix such value in any arbitrary manner at a figure which has no relation in fact to the actual market value of the property. In *Adams Express Co.* v. *Ohio*, 166 U. S. 185, this Court said:

> "It is a cardinal rule which should never be forgotten that whatever property is worth for the purpose of income and sale it is also worth for the purposes of taxation. * * * The value which property bears in the market, the amount for which its stock can be bought and sold, is the real value."

In 4 Cooley on Taxation (4 Ed.), p. 3342, it is said:

> "The courts may enjoin collection where the assessment was made on a fundamentally wrong basis or theory, resulting in overvaluation."

Can it be said in good faith that the value of the gas produced by the plaintiff in error is the sales price less cost of transportation? This would at once eliminate the

profit which the plaintiff is entitled to make upon its transportation. But in addition to this, there is a real difference in actual fact between the value at the point of production and the value at the point of sale, and these facts neither legislatures nor courts may lawfully ignore. The enhancement in value may result in part from cost of transportation, and in part from the possession of the transportation facility and the power thereby to place the gas in interstate commerce, and in part to the greater demand or more profitable uses to which it may be put in extra-state markets, and in part to other causes; but whatever its cause, the enhancement itself is a matter of solid, substantial fact, and insofar as it results from the instrumentalities of interstate commerce, and transactions in such commerce, it is beyond the power of the state to tax.

The defendants in error admitted in the court below that the value of the gas produced by the plaintiff is augmented by its pipe line system, but they argued there that the enhancement in value was not due altogether to the transportation of the gas, but that the value was enhanced prior to transportation, perhaps on the theory that the existence of the transportation facility gives increased value to the gas produced within reach of its lines. We also contend that the vast transportation system of the plaintiff in error does give added value to all gas produced by it or which may be handled by its lines, but this does not obviate the fact that there is an actual market value of all such gas at the point of production, which value is fixed like all other values by the elements of supply and demand, cost of production and anything else which may affect the price which a purchaser may be willing to pay for the gas at that point. To say that such gas is worth as much at the well as it is worth in a distant city where there is a demand for it and a need for its consumption, less mere cost of transportation, is simply a contradiction in terms. The price for which gas can be sold at the well is the value of it, for all com-

mercial as well as legal purposes, and it is not competent even for the legislature to attempt to value property for purposes of taxation in any other manner. Any other so-called value would be a mere arbitrary figure, not justified by any facts, and could not be sustained.

Since both of the state courts, as stated above, have held in accordance with our contentions that in so far as the Act in question imposes a tax which is measured by the gross receipts of interstate commerce, it is unconstitutional and void, we do not deem it necessary to discuss the authorities upon this question, which are collated in the footnote, (*1*) or to repeat the argument made below. The difference between our position and that of the Supreme Court of Appeals on this point is that we contend the Court's decision does not eliminate from the measure of the tax all the elements of value created by the handling and sale of plaintiff's gas in interstate commerce.

(*1*) The following authorities are relied upon to support the points stated:

(A) Congress has sole power to regulate interstate commerce, and a tax imposed by a state which would operate to burden such commerce amounts to an attempted regulation thereof, and is forbidden by the Constitution.

Const. U. S., Art I, Sec. 8.
Pennsylvania v. *West Virginia*, 262 U. S. 553.
Gloucester Ferry Co. v. *Pennsylvania*, 114 U. S. 196.
Lyng v *Michigan*, 135 U. S. 151, 166.
Robbins v. *Shelby Taxing Dist.*, 120 U. S .489.
Crutcher v. *Kentucky*, 141 U. S. 47.

(B) The handling of natural gas as it is done by the plaintiff, by producing purchasing and collecting it in West Virginia, and transporting it by pipe lines into other states for sale and use, constitutes interstate commerce.

Pennsylvania Gas Co. v. *Public Service Commission*, 252 U. S. 23.
Public Utilities Commission v. *Landon*, 249 U. S. 236.
Missouri v. *Kansas Natural Gas Co.*, 265 U. S. 298.
West v *Kansas Natural Gas Co.*, 221 U. S. 229.
People v. *Saxe*, 229 N. Y. 446, 128 N. E. 673.
United Fuel Gas Co. v. *Hallanan*, 257 U. S. 277.
Pennsylvania v. *West Virginia*, 262 U. S. 553.

(C) A state tax levied directly upon interstate commerce is void.

(C-1) Taxes measured by volume of business:

Philadelphia & Reading R. Co. v. *Pennsylvania*, 82 U. S. 232.
W. U. Tel. Co. v. *Texas*, 105 U. S. 460.
W. U. Tel. Co. v. *Pennsylvania*, 128 U. S. 39.
Eureka Pipe Line Co. v. *Hallanan*, 257 U. S. 265.

(C-2) License taxes imposed on occupations:

Crutcher v. *Kentucky*, 141 U. S. 47.
Robbins v. *Taxing District*, 120 U. S. 489.
Leloup v. *Mobile*, 127 U. S. 640.
McCall v. *California*, 136 U. S. 104.
Moran v. *New Orleans*, 112 U. S. 69.
Harmon v. *Chicago*, 147 U. S. 396.

(D) A state tax levied on the gross receipts from interstate commerce is invalid, whether (1) imposed directly on the receipts as such, (2) in the guise of a franchise tax, or (3) an occupation tax.

(D-1) Taxes upon gross receipts as such:

Ratterman v. *W. U. Tel. Co.*, 127 U. S. 411.
W. U. Tel. Co. v. *Seay*, 132 U. S. 472.

(D-2) Franchise tax measured by gross receipts:

People v. *Saxe*, 229 N. Y. 446, 128 N. E. 673.

(D-3) Occupation tax measured by gross receipts:

Philadelphia & S. M. S. Co. v. *Pennsylvania*, 122 U. S. 326.
Fargo v. *Stevens*, 121 U. S. 230.
Galveston &c R. Co. v. *Texas*, 210 U. S. 217.
Meyer v. *Wells Fargo Co.*, 223 U. S. 298.
Crew Levick Co. v. *Pennsylvania*, 245 U .S. 292.
Eureka Pipe Line Co. v. *Hallanan*, 87 W. Va. 396.

(E) A tax in substance on gross receipts from interstate transportation and interstate sales cannot escape condemnation under the commerce clause merely by the device of calling it a tax on production.

W. U .Tel. Co. v. *Kansas*, 216 U. S. 1.
Looney v. *Crane Co.*, 245 U. S. 178.
Alpha Portland Cement Co. v. *Massachusetts*, 268 U. S. 203.
Galveston &c R. Co. v. *Texas*, 210 U. S. 217.
Terral v .*Burke Construction Co.*, 257 U. S. 529.
Frick v. *Pennsylvania*, 268 U. S. 246.

An examination of the above authorities will disclose a broad current of decision, running from *Fargo* v. *Stevens*, 121 U. S. 230, and

Philadelphia & S. M. S. Co. v. *Pennsylvania*, 122 U. S. 326, down to Crew Levick Co. 1. Pennsylvania, 245 U. S. 292, holding that gross receipts from interstate commerce may not be taxed by the states, directly on indirectly, under any form or guise.

II

The Act in question is void because in violation of the Fourteenth Amendment of the Constitution of the United States. The said Act deprives the plaintiff in error of property without due process of law, and denies to the plaintiff in error the equal protection of the laws.

1. *The Lack of Due Process*

For the reason that the Act in question attempts to take the property of the plaintiff in error under the guise of a tax which is illegal and void, and to collect taxes from the receipts of commerce among the states, we contend that the act also violates the Fourteenth Amendment in taking property without due process of law.

It is axiomatic that a state is powerless to impose a tax upon property not within its jurisdiction, or upon *subjects of taxation* which by law are beyond the reach of state levy, such as interstate commerce and the receipts therefrom. "The taxation imposed must have relation to a subject within the jurisdiction of the taxing government"; otherwise the exaction is a taking of property without due process of law.

Western Union Tel. Co. v. *Kansas*, 216 U. S. 1.
Looney v. *Crane Co.*, 245 U. S. 178.
Int. Paper Co. v. *Massachusetts*, 246 U. S. 135.
Louisville & c Ferry Co. v. *Kentucky*, 188 U. S. 385, 396.
Hays v. *Pacific Mail S. S. Co.*, 17 How. 596, 599.

Delaware &c R. Co. v. *Pennsylvania,* 198 U. S. 341.
Union Ref. T. Co. v. *Kentucky,* 199 U. S. 194.
Provident &c Society v. *Kentucky,* 239 U. S. 103.

2. *The Denial of the Equal Protection of the Laws*

We also assert that because the act in question purports to levy taxes which do not apply equally and uniformly upon all tax-payers in similar circumstances, but which exact a greater tax from the plaintiff in error than from others engaged in a like business, and because the act makes arbitrary and unreasonable classifications and arbitrarily exempts certain persons from all taxes, though engaged in the same pursuits, the act also violates the above provision which forbids any state to deny to any person within its jurisdiction the equal protection of the laws.

The lower court attempted to justify the discriminatory provisions of the act by the assumed power of classification. But classification must not be arbitrary or discriminatory.

Southern R. Co. v. *Green,* 216 U. S. 400.
Cotting v. *Kansas City Stock Yards,* 183 U. S. 79.
Gulf &c Ry. v. *Ellis,* 165 U. S. 150.
Raymond v. *Chicago Union T. Co.,* 207 U. S. 20.

And when a class is selected for taxation, no arbitrary exemption can be made of any within the class.

Cotting v. *Kansas City Stock Yards,* 183 U. S. 79.
Yick Wo v. *Hopkins,* 118 U. S. 356.
Sperry & Hutchinson v. *Melton,* 69 W. Va. 124.

We point out some respects in which the operation and effect of the act would deny the equal protection of the laws.

(1) *Unequal standards of measuring the tax.* The tax under section 2-a is denominated a privilege tax, levied upon the business of producing natural gas. But the measure of the tax is neither the quantity of gas produced, nor the value of the gas when produced. The legislature, on the other hand, adopted a method of measurement which of necessity must operate unequally and lead to discriminatory results. It seeks to impose the tax, at a given rate, upon "*the gross proceeds derived from the sale*" of the gas, "*regardless of the place of sale.*"

As applied to the gas business, this would lead to different rates of taxation even if all gas were sold at the mouth of the well. Not only do different prices prevail in different localities, but gas is frequently sold by contract for a period of years, based on the market price prevailing at the time the contract is made, and it is not uncommon to find gas from adjoining wells being sold at the same time for widely different prices. Other factors affect the prices, such as the business acumen of the producer and purchaser, respectively, or the necessities of the parties and their situation with reference to other markets. It is easily possible that gas may be sold today at some points in the state, under contracts made many years ago, for as low as three cents per thousand cubic feet, or possibly less; whereas gas produced in the same field, and on an adjoining farm, may be selling at the same time and under the same conditions for ten, fifteen or twenty cents per thousand cubic feet. In such a situation all uniformity in the application of these taxes disappear.

But when we proceed to the next provision of the statute, which taxes the proceeds of sale "regardless of the place of sale", we perceive that an additional element of

uncertainty and inequality has been introduced, and one which makes absolutely impossible any contention that the taxes imposed operate equally and uniformly upon producers of natural gas. As we have already shown, the value of gas at any other place than the point of production is affected by numerous elements in addition to the value at the point of production; hence the cost of transportation and all these elements which enhance the value are taxed by any imposition based upon the sales price at the distant point. Suppose that A and B produce natural gas on adjoining farms. A sells his gas at the well for five cents per thousand cubic feet; B transports his gas to the state line and there sells it in interstate commerce for forty cents per thousand cubic feet. The tax imposed upon A is 1.85 per cent of five cents, while that on B is 1.85 per cent of forty cents; yet under the terms of the act they are taxed for the identical privilege or occupation, namely, the business of producing natural gas. We submit that this is a denial of equal protection of the laws.

The record shows that prices received for gas in 1925 ranged from 5.57 cents per thousand cubic feet, paid to producers by the United Fuel Gas Company (R. 164), to 61.092 cents received from sales by the Manufacturers Light and Heat Company (R. 89), or a difference of approximately 1200 per cent. These are the gross receipts which the Act purports to tax under the guise of a tax on production. The forcible manner in which this demonstrates the discriminatory nature of the imposition leaves nothing to be added.

The Supreme Court of Appeals introduced still another element of uncertainty and discrimination into the act when it decided that the gross sales price could not be taken as the measure of the tax in cases like that of the plaintiff in error, where that price includes receipts from interstate commerce. Under the decision of the Court, the value of natural gas, for the purpose of

computing the production tax thereon, may be ascertained by at least three different methods: (a) where the producer sells his gas at the well, the gross sales price at that point would no doubt be the basis of the tax; (b) where the producer transports the gas to another point in West Virginia and there sells it, the value taxed would still be the gross sales price, but in this case it would include cost of transportation, distribution, and all other expenses incurred in transporting and selling it; (c) where the producer transports all or a portion of his gas to points outside the state, or introduces it into interstate commerce at the point of production, we understand the principle of the Court's decision to be that the value must be ascertained before the gas enters interstate commerce; that is to say, at the point of production, by deducting the cost of transportation from the ultimate gross receipts. Where part of the gas is transported in interstate commerce, and the remainder sold within the state, the different portions thus sold by the same producer would come to be valued in different ways.

But in any event, since the Court's decision requires that gas sold in interstate commerce must be valued for the purposes of this tax in a manner contrary to the method prescribed by the legislature, while all other gas is valued at the gross sales price, without regard to actual value, we assert that the plaintiff in error is thus deprived of the equal protection of the laws.

The plaintiff in error itself sells gas for prices ranging from 17 cents to 50 cents per thousand cubic feet, within the State of West Virginia. It seems clear to us that if this tax be treated as one imposed upon the privilege of producing gas, it neither applies equally and uniformly to all persons engaged in that business, nor does it even apply equally and uniformly to all the gas produced by the plaintiff in error. Can it be said that it is competent for the legislature, upon the assumption that this is a tax

upon the production of gas, to classify those engaged in the business into as many different classes as there may happen to be different prices for their product? Such classification we submit would be entirely arbitrary; it would have no relation to the purported incidence of the tax, namely, the production of the gas.

United Cigar Stores Co. v. *Stewart*, 144 Ga. 724.
Beckett v. *Mayor of Savannah*, 118 Ga. 58.
State v. *Doran*, 28 S. D. 486.
Hocfling v. *San Antonio*, 85 Tex. 228.

An arbitrary, known and intentional violation of the rule of uniformity is an invasion of constitutional right.

Keokuk & H. Bridge Co. v. *Salm*, 258 U. S. 122.
Raymond v. *Chicago Union Traction Co.*, 207 U. S. 20.
Sunday Lake Iron Co. v. *Wakefield Township*, 247 U. S. 350.
Sioux City Bridge Co. v. *Dakota Co.*, 260 U. S. 441.
Pelton v. *National Bank*, 101 U. S. 143.
4 Cooley on Taxation, p. 3342.

Unreasonable classification, based on arbitrary distinctions, denies equal protection of the laws.

Royster Guano Co. v. *Virginia*, 253 U. S. 412.
Chalker v. *Birmingham &c. Co.*, 249 U. S. 522.
St. Louis &c. R. Co. v. *Arkansas*, 235 U. S. 350.

"The guaranty of the equal protection of the laws, therefore, is directed against arbitrary discriminations in taxation, and in this sense secures

> equality in taxation. * * * The guaranty of equal protection of the laws, therefore, protects the citizen against arbitrary discriminations affected by the State in the exercise of its power of taxation, as it protects him against the arbitrary exercise of any of the powers of government. * * * If contribution is not required according to this principle of apportionment equally and uniformly from all of the same class of subjects within that jurisdiction, it is not a tax but an arbitrary exaction. Uniformity and equality in this sense, like a public purpose, are involved in the very conception of taxation."

Judson on Taxation (2d Ed.) sec. 501.

(2) *The exemption feature.* Section 2-h of the act in question provides as follows:

> "In computing the amount of tax levied hereunder, however, for any year, there shall be deducted from the values, or from the gross income of the business, as the case may be, an exemption of ten thousand dollars of the amount of such values or gross income." (R. 138, sec. 2-*h*.)

The effect of this provision is to exempt from taxation the first ten thousand dollars received by a producer of gas as the gross proceeds derived from the sale thereof. This leads to inequality of taxation. If A produces and sells $11,000 worth of gas in a year, and B produces and sells $12,000 worth, the exemption leaves A to pay the tax on $1,000 of receipts and B to pay on $2,000. B is required to pay twice the tax that A pays, whereas he produces and sells only 1-11 more gas than A.

The further effect is that every producer in the state who sells his gas for less than $10,000 in a single year is entirely exempted from the payment of the tax imposed by this act. This operates as a further invidious discrimination against interstate commerce, for the large companies engaged in such commerce must all pay the tax, while the small producer selling his gas at the well

or locally may be wholly exempt from the tax, or required to pay upon only a small fraction of his production.

The lower court attempted to justify this discrimination also on the ground of classification. But we contend that there is no attempt at classification involved in this provision, and if there were, the necessary grounds for classification do not exist. It is an absolute exemption from taxation of the sum of $10,000 out of the gross proceeds received by any producer of gas, which may operate to exempt any particular producer either partially or entirely from taxation. No reason for this exemption appears in the act, and we submit that none can be assigned.

This tax is denominated by the legislature as a "*privilege tax.*" It is imposed upon every person engaged "in the business of mining and producing for sale, profit, or use, any * * * natural gas". Taking this as a proper description of the tax, it must necessarily follow that all who enjoy the privilege must share the burden of the tax.

If a small producer sells his gas for ten cents per thousand cubic feet at the well and receives therefor $10,000 in a single year, he is exempt from taxation. If the plaintiff in error produces the same quantity, transports it to one of the cities served by it in West Virginia, and sells it at fifty cents per thousand cubic feet, it receives $50,000 therefor, and must pay a tax upon $40,000 of the proceeds. This is not equality and uniformity either as regards the subject of taxation or the persons taxed. And if all gas were sold at exactly the same price, we still contend there is no justification for relieving those selling less than $10,000 worth from the burden of supporting the government, and placing the burden upon the other producers.

In the case of *Cotting* v. *Kansas City Stock Yards*, 183 U. S. 79, this Court says, (opinion, page 111):

"But while recognizing to the full extent the impossibility of an imposition of duties and obligations mathematically equal upon all, and also recognizing the right of classification of industries and occupations, we must nevertheless always remember that the equal protection of the laws is guaranteed, and that such equal protection is denied when upon one of two parties engaged in the same kind of business and under the same conditions burdens are cast which are not cast upon the other. There can be no pretense that a stock yard which receives 99 head of cattle per day a year is not doing precisely the same business as one receiving 101 head of cattle per day each year. It is the same business in all its essential elements and the only difference is that one does more business than the other. But the receipt of an extra two head of cattle per day does not change the character of the business. *If once the door is opened to the affirmance of the proposition that a State may regulate one who does much business, while not regulating another who does the same but less business, then all significance in the guarantee of the equal protection of the law is lost,* and the door is opened to that inequality of legislation which Mr. Justice Catron referred to in the quotation above made. This statute is not simply legislation which in its indirect results affects different individuals or corporations differently, nor with those in which a classification is based upon inherent differences in the character of the business, but is a positive and direct discrimination between persons engaged in the same class of business and based simply upon the quantity of business which each may do. If such legislation does not deny the equal protection of the laws, we are unable to perceive what legislation would do."

The Supreme Court of Appeals of West Virginia dealt with this question in *Sperry & Hutchinson Co.* v. *Melton*, 69 W. Va. 124. On page 125 the Court declares: "The tax must be equal and uniform in relation to all persons of the same class", and on page 127 it is said:

> "Every person in the particular vocation must pay it, so it has been made to conform to the rule of reasonable classification and for equality and uniformity. There is no semblance of discrimination in favor of one person engaged in the business as against another engaged in the same business."

In *Oliver Mining Co.* v. *Lord,* 262 U. S. 172, this Court said:

> "The state may exercise a wide discretion in selecting subjects of taxation, particularly as respects occupation taxes. It may select those who are engaged in one class of business and exclude others, if all similarly situated are brought within the class and all members of the class are dealt with according to uniform rules."

In conclusion, it is submitted with deference that the final order of the Supreme Court of Appeals of West Virginia, herein complained of, should be reversed, and the Act in question held to be unconstitutional, null and void as to to the business of the plaintiff in error, and that said plaintiff in error be granted the full relief prayed for in its bill of complaint herein.

JOHN W. DAVIS,
New York City.
H. D. RUMMEL,
Charleston, W. Va.
Attorneys for Plaintiff in Error.

ARTHUR E. YOUNG,
CHARLES POWELL,
KEMBLE WHITE,
ANTHONY F. MCCUE,
S. E. W. BURNSIDE,
EDWARD M. BORGER,
.. *Of Counsel.*

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WM. R. STAN

No. 810

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

HOPE NATURAL GAS COMPANY, *Plaintiff in Error,*

vs.

GRANT P. HALL, STATE TAX COMMISSIONER, ET AL., *Defendants in Error.*

IN ERROR TO THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

BRIEF FOR DEFENDANTS IN ERROR

HOWARD B. LEE,
Attorney General of West Virginia
For Defendants in Error.

T. C. TOWNSEND
FRED O. BLUE
Of Counsel.

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No. 815

IN THE

Supreme Court of the United States

OCTOBER TERM, 1926

HOPE NATURAL GAS COMPANY, *Plaintiff in Error,*

vs.

GRANT P. HALL, STATE TAX COMMISSIONER, ET AL., *Defendants in Error.*

IN ERROR TO THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

BRIEF FOR DEFENDANTS IN ERROR

SUPPLEMENTARY STATEMENT OF FACTS

Of facts, which we deem material to the consideration of the questions presented, the following facts, among others agreed to and stipulated by the parties to the suit, are omitted from the statement of the brief for plaintiff in error.

1. All allegations of the bill to the effect that the tax under Section 2-a is a tax on transportation and sale of natural gas in interstate commerce, or for the privilege of transporting and selling the same in interstate com-

merce, are denied by the defendants' answer. In paragraph 29 of the answer the defendants averred, "that the tax under Section 2-a of the act is not for the privilege of transporting and selling gas in interstate commerce, or otherwise, but is a tax for the privilege of mining and producing natural gas for sale, profit or use in this state, and measured as prescribed by the act." (R. 53).

2. While the plaintiff's bill averred that plaintiff's chief business is, and always has been, the production and purchase in West Virginia of natural gas and transportation by means of pipe lines from the places of production and purchase of the major portion of said gas through, across and out of the state for sale and delivery in interstate commerce to other companies for further continuous and uninterrupted transportation in the Commonwealth of Pennsylvania and State of Ohio for consumption and use therein, yet, on the issue as to the plaintiff's chief business it was agreed and stipulated "That its chief business is now and always has been the production and purchase in West Virginia of natural gas and that it transports and delivers the same, by means of pipe lines from the places of production and purchase of a major portion of said gas, through and across the state, for sale and delivery at the state lines for further continuous and uninterrupted transportation into the Commonwealth of Pennsylvania and State of Ohio for consumption and use therein." (R. 63).

3. That none of the plaintiff's contracts with the companies purchasing gas from it at the state lines require the plaintiff to deliver such gas from any particular well, group of wells or particular section of plaintiff's gas territory; and that plaintiff's selling prices for gas delivered under any of its said contracts apply uniformly

to all gas delivered to the respective purchasers regardless of whether the same is produced or purchased by plaintiff at, near to, or distant from the respective points of delivery mentioned in said contracts; and all of said gas is delivered in the manner as set forth in the stipulation (R. 131). Plaintiff has a number of its gas wells in the counties adjoining and some of its wells are near to the points of delivery on the state lines. Of plaintiff's 3156½ producing wells, 551 thereof are in the five border counties of Marshall, Monongalia, Pleasants, Tyler and Wetzel on the lines of which counties (state line between this state, Ohio and Pennsylvania) are the delivery points under the five contracts, 1760 thereof are in the four adjoining counties of Doddridge, Harrison, Marion and Ritchie, 242 thereof are in Gilmer, 361½ in Lewis, 39 in Braxton and 168 in Calhoun counties, respectively; plaintiff has only one well in the county of Clay and no wells in the counties of Kanawha and Boone, although its line passes through the county of Kanawha and extends into the county of Boone (R. pp. 139-141).

4. Plaintiff and United Fuel Gas Company, Columbia Gas & Electric Company, Pittsburgh & West Virginia Gas Company, Manufacturers Light & Heat Company, Reserve Gas Company, Carnegie Natural Gas Company and the West Virginia Central Gas Company (and its affiliated companies) severally produce and purchase natural gas in West Virginia and severally own, maintain and operate a system of pipe lines in the state through which such natural gas is conveyed from the wells producing the same and deliver the major portion thereof at the state lines (R. 118). Of the natural gas produced in West Virginia and consumed out of the state, at least 99 per cent thereof is sold, transported and delivered by the plaintiff and the seven last named cor-

porations. The gas produced by said companies is not metered nor has it ever been so at the wells, but is received into the transportation systems and therein commingled with purchased gas and metered only at the points of delivery (R. 119). Plaintiff, as well as the other seven corporations having pipe lines, will not transport natural gas, as a common carrier, for others.

5. That natural gas is produced by drilling wells into gas containing strata in the earth and that it is a mineral peculiar to itself; it is invisible and in a sense intangible and cannot be moved, handled, stored and delivered as coal, crude oil or petroleum, limestone, sand or other mineral products, or timber; that coal, limestone, sand, timber and the products thereof, may be stored in the open without restraint or protection and that crude oil, or petroleum, may be stored in open top tanks; that when the gas bearing stratum is punctured, the natural gas found therein often has heavy natural pressure, called rock pressure, and because of its natural pressure it must be confined in the well or pipe lines of sufficient strength connected therewith to resist the natural pressure, or otherwise it will escape; because of its natural pressure natural gas will, when confined in pipe lines, travel or transmit itself therein until the pressure encountered and the friction in the lines overcome the rock pressure. That, owing to the peculiar nature of gas and the impracticability of carrying it for others as a business, as well as for other reasons, the plaintiff will not transport it for others as a common carrier and this is true as to all other gas companies having pipe line systems in West Virginia. Natural gas may be and is taken from the pipe line and, under reduced pressure, used directly, and without refinement or treatment, for heat, light and power, wherein it differs from other products and things in the Act mentioned. Coal, limestone,

sand, timber and crude oil or petroleum are tangible, can be and are moved, handled, stored, and delivered; can be transported by wagons, trucks and railroad cars and railroad tank cars, although crude oil or petroleum is more largely transported by pipe lines; can be and are delivered to purchasers thereof at the place of production to be transported by common carriers or delivered to common carriers for transportation to the purchasers. That coal, limestone and sand may be opened when discovered and left open indefinitely without loss or escape thereof or appreciable damage thereto, in a state of rest and the extent and quantity thereof definitely ascertained and determined. (R. pp 131-132).

6. There is no evidence in the record, nor stipulation by the parties, respecting the value of plaintiff's gas at the wells where produced by it, and the same is true as to the above named seven corporations. The stipulation goes only to the prices which the plaintiff and the said seven corporations (who transport 99 per cent of all the gas produced in West Virginia and consumed out of the state) pay to others who produce natural gas in the state, but have no pipe line systems. The average price paid by plaintiff for all gas produced in West Virginia and purchased by and delivered to it during nine months ending September 30, 1925 was 17.007 cents per thousand cubic feet for 19,588,045,000 cubic feet of natural gas. (R. 115).

7. That plaintiff made annual returns to the defendant State Tax Commissioner pursuant to an Act of the Legislature passed April 29, 1921 and paid the taxes thereunder to the defendant State Tax Commissioner for the periods July 1 to December 31, 1921 and for the years ending December 31, 1922, December 31, 1923, December 31, 1924 and for the period from January 1, 1925

to June 30, 1925. The Act of 1921 is part of the record (R. pp. 223-234). The returns are parts of the record. (R. pp. 357-385).

Turning from such omissions in the statement of the brief for plaintiff in error, attention is now directed to the decree of the Supreme Court of Appeals of West Virginia, from which this writ of error is prosecuted, reading as follows:

> "Upon an appeal from and supersedeas to a decree of the Circuit Court of Kanawha County, pronounced on the 25th day of May, 1926.
>
> The Court, having maturely considered the transcript of the record of the decree aforesaid and the arguments of counsel thereon, is of opinion, for reasons stated in writing and filed with the record, that there is error in said decree but that the same may be corrected in this Court. It is therefore adjudged, ordered and decreed that the decree of the Circuit Court of Kanawha County, pronounced in this cause on the 25th day of May, 1926, in so far and in so far only as it enjoins the defendants from enforcing against the plaintiff the provisions of Sec. 2a of Chapter 1 of the Acts of the Extraordinary Session of 1925, of the Legislature of West Virginia, by imposing a tax upon the natural gas produced by the plaintiff, based upon the value thereof within the State and before it enters interstate commerce, be and the same hereby is modified and corrected so as to permit defendants to impose and enforce against the plaintiff a tax, under said section, upon the natural gas so produced by it, based upon the value thereof within the State and before it enters upon interstate commerce, and that in all other respects said decree as hereby modified and corrected be

and the same hereby is affirmed. It is further adjudged, ordered and decreed that the appellee do pay to the appellants, the parties substantially prevailing, their costs about the prosecution of their appeal and supersedeas in this Court in this behalf expended: all of which is ordered to be certified to the Circuit Court of Kanawha County.

The decision of points in the foregoing cause, as the same appears from the syllabus and written opinion prepared by Judge Hatcher, was concurred in by Judges Miller and Lively. Judges Litz and Woods concurred in part and dissented in part, and each filed an opinion." (R. pp. 258-259).

By such decree and the construction given by the said Supreme Court of Appeals to the statute in question the defendants are only permitted to impose and enforce against the plaintiff a tax under section 2-a upon the natural gas so produced by it, based upon the value thereof within the state and before it enters upon interstate commerce. Under such decree and construction there can be no possible tax on gross receipts of plaintiff's gas sold in interstate commerce, or on the transportation, or receipts from transportation, of its gas in interstate commerce, yet, at pages 11 and 12 of brief for plaintiff in error, and as part of the statement of facts, is the following paragraph—

"Without attempting to average the prices paid by the plaintiff for gas at the wells, or to deduce from this data a fair normal price for such gas, we call attention to the fact that between the highest price paid for gas at the point of production, namely, 15 cents per thousand cubic feet, and the average prices received at the state line from sales in interstate commerce, there is a clear margin of

more than 21 cents, and that this enhancement in value must be attributed to the transportation, delivery and sale of the gas to that point and the greater demand for gas in the markets so supplied; in other words, the enhanced value is due solely to the transportation and sale of the gas in interstate commerce. At the rate at which such gas was marketed in 1925 this sale in interstate commerce would produce gross receipts, in addition to the value of the gas when produced, of more than $10,000,000, which the state of West Virginia by the act in question proposes to tax."

ARGUMENT

The first point of law and fact argued as ground for reversal of the judgment of the Supreme Court of Appeals of West Virginia is—"*The act in question is void because in violation of Article 1, Section 8, of the Constitution of the United States. The said act taxes, burdens and regulates interstate commerce.*"

The state court of first instance held Section 2-a of the act in question void because, as construed by that court, the tax imposed thereby substantially burdens and interferes with interstate commerce, but the Supreme Court of Appeals put another and a different construction on said section and held that it was the legislative intent to determine the amount of the tax by the value of the gas produced in the state before it entered interstate commerce, and decreed accordingly. (R. 258). *Hope Natural Gas Co.* v. *Hall, State Tax Commissioner*, 135 S. E. 582.

The construction of the act by the Supreme Court of Appeals of West Virginia will be accepted by this court as though such construction was specifically expressed in the statute itself. Des Moines National Bank v. *Fair-*

weather, 263 U. S. 103, 68 L. Ed. 191; *Missouri Ex Rel Hurwitz* v. *North*, 271 U. S. 40, 70 L. Ed. 818.

In the recent case of *Jones* v. *Prairie Oil & Gas Co.*, United States Supreme Court Advance Opinions No. 8, page 389, February 15, 1927, Mr. Justice Holmes at page 391 said this: "*But apart from that construction no case yet has gone to the length of undertaking to correct the construction of state laws by state courts. The exclusive authority to enact those laws carries with it final authority to say what they mean. The construction of those laws by the Supreme Court of a state is as much the act of the state, as the enactment of them by the legislature.*" (Italics ours).

In view of the construction by the Supreme Court of Appeals of West Virginia, there is no real ground for contending that the act as so construed, burdens, interferes, or attempts to regulate interstate commerce.

Mining or producing gas is a local business; nor does the fact that it is to be afterwards shipped or used in interstate commerce make its production a part of such commerce. United Mine Workers v. *Coronado Coal Co.*, 259 U. S. 344, 66 L. Ed. 795; *Crescent Cotton Oil Co.* v. *State of Mississippi*, 257 U. S. 129, 66 L. Ed. 166; *Heisler* v. *Thomas Colliery Co.*, 260 U. S. 245; 67 L. Ed. 237; *Oliver Iron Mining Co.* v. *Lord*, 262 U. S. 172, 67 L. Ed. 929; *American Mfg. Co.* v. *City of St. Louis*, 250 U. S. 459, 63 L. Ed. 1084; *American Mfg. Co.* v. *City of St. Louis*, (C. C. A.) 8 Fed. (2d) 447; *Stratton's Independence* v. *Howbert*, 231 U. S. 399, 415, 58 L. Ed. 285; *United Leather Workers International Union* v. *Herkert & M. Trunk Co.*, 265 U. S. 457, 68 L. Ed. 1104; *Del., Lack. & West. R. R.* v. *Yurkonis*, 238 U. S. 439, 59 L. Ed. 1397; *Anderson* v. *Shipowners Association*, United States Supreme Court Advance Opinions No. 4, page 168, December 15, 1926. So that the tax under section 2-a is a

tax on a local business, determined by the value of the product before it enters interstate commerce.

In *Oliver Iron Mining Co.* v. *Lord, Supra,* Mr. Justice VanDevanter at page 179, speaking of the occupation tax on the business of mining iron ore, there under consideration, said—"The ore does not enter interstate commerce until after the mining is done, and the tax is imposed only in respect of the mining. No discrimination against interstate commerce is involved. The tax may indirectly and incidentally affect such commerce, as any taxation of railroad and telegraph lines does, but this is not a forbidden burden or interference." If the terms "natural gas" were substituted for the term "ore" and the term "producing" for the term "mining," the above quotation would fit and determine the instant case in respect to the point now under discussion.

Brief for plaintiff admits that the Supreme Court of Appeals "is upon unassailable ground, so far as the commerce clause is concerned, when it asserts the power of the state to tax the value of natural gas within the state, and before it enters interstate commerce." (Brief p. 23). It is asserted, however, in said brief, page 24, that the value cannot be ascertained by any of the customary methods of appraisal, but solely "as shown by the gross proceeds derived by the sale thereof by the purchaser" • • • "regardless of the place of sale or the fact that delivery may be made to points outside of the state." It is asserted, however, in the brief that the Supreme Court of Appeals is powerless to expunge this language, either by construction or otherwise. It is then further asserted therein at page 26, that the Supreme Court of Appeals "either holds explicitly or takes for granted that the difference in value of the plaintiff's gas 'before it enters upon interstate commerce' and at the point of sale at the state line, is measured by the *cost of transportation between the two*

points." And it is also further asserted therein that, "This fallacy runs through the entire opinion of the court, and will result, and was no doubt intended to result, in the fixing of a tax upon the plaintiff's gas, based upon the proceeds of sale in interstate commerce, with a deduction of some indeterminate amount for assumed transportation. This we contend does not meet the constitutional requirement that interstate commerce must be kept inviolate from state regulation through taxation or other means." Then, after quoting an excerpt from the court's opinion, pp. 25 and 26, it is further asserted, "Here is a clear holding that the legislature may tax the entire gross proceeds of interstate commerce, except only so much thereof as represents the cost of transporting the commodity to the extra-state market. This results from a fallacious concept. It presents an inapt method of ascertaining the value of the commodity 'before it enters upon interstate commerce' and one of such apparent circuitousness as to require explanation." In short, the burden of the argument in this respect is, that the Supreme Court of Appeals meant to hold that the value of plaintiff's gas "before it enters upon interstate commerce" is the price received at the state line less the cost of transporting the gas from the place where produced to the state line. We respectfully submit that such argument must be rejected because:

(1) The opinion is not susceptible of such construction;

(2) The decree, which expresses the judgment of the court, controls the parties to the cause and the meaning of the opinion, if there is any doubt as to the meaning of the latter, clearly adjudges that the measure of the tax is the value of the plaintiff's gas in West Virginia before it enters interstate commerce;

(3) The law of the case, as expressed in the syllabus pursuant to the requirements of the state constitution,

allows, but does not require, the state to take into consideration the gross proceeds of the natural gas produced in the state and sold in another, but only for the purpose of determining the value thereof before it enters interstate commerce.

Most assuredly the plaintiff's gas has a value before it enters interstate commerce and that the same is ascertainable and that the price plaintiff receives for gas sold at the state line is one of the things that may be taken into consideration when ascertaining the value of the gas before it enters into interstate commerce.

It must be remembered that the statute in question, as construed by the Supreme Court of Appeals, and the decree of that court complained of, have not been applied nor has the act as so construed or the said decree been attacked by the plaintiff in error by any suit or other proceedings in the courts of the State of West Virginia.

It occurs to us as very questionable whether the statute as now construed has been drawn in question so as to give this court jurisdiction to review it by writ of error, under such decisions as *Murdock* v. *Mayor & etc. of Memphis,* 20 Wall. 590, 22 L. Ed. 429; *Morrison* v. *Watson,* 154 U. S. 111, 38 L. Ed. 927; *First National Bank* v. *Estherville,* 215 U. S. 341, 54 L. Ed. 223, and others of like effect, holding that in order to give this court jurisdiction of a writ of error to review a judgment of the highest court of a state, on the ground that it decided against a title, right, privilege or immunity claimed under the constitution of the United States such title, right, privilege or immunity must have been "specially set up or claimed" at the proper time in the proper way—in other words, must have been drawn in question by a proper suit or proceeding and with a decision of the state court against the complaining party. However this may be, it is certain that whole argument in the brief

for plaintiff in error, under the first point of law and fact therein, proceeds on a construction of the opinion of the Supreme Court of Appeals by counsel for plaintiff in error and their assumption of the course of action of the State Tax Commissioner thereunder.

In brief of plaintiff in error at page 25 it is said:

> "While the Court, as we have said, did not in its formal order direct the tax commissioner as to how the value of plaintiff's gas 'before it enters upon interstate commerce' is to be ascertained, the opinion points out the method which the Court assumes will be followed. It informs the taxing authorities how to proceed, without giving binding directions. Not, indeed, with entire frankness, but yet with a considerable degree of clarity, emphasized by reiteration, there is set out a scheme of valuation whereby the tax may be applied to the business of the plaintiff in error in such manner as to reach the major values created by the sale of the gas in interstate commerce, while still expressing the intent not to do so."

It would be a violent assumption to assume that the Supreme Court of Appeals acted in bad faith and said one thing while meaning another and that the State Tax Commissioner will enforce the Act in question contrary to the decree of said court.

Before this court will pronounce a judgment of a state court to be in conflict with the Federal Constitution, it must be made to appear that its decision is necessarily in conflict therewith, and not that possibly, or even probably, in such conflict.

In *Adams* v. *Russell*, 229 U. S. 353, 57 L. Ed. 1224, at page 360, Mr. Justice McKenna, speaking for the court said:

> "In Mississippi & M. R. Co. v. Rock, 4 Wall, 177, 18 L. Ed. 381, and Phoenix Ins. Co. v. The Treasurer (Phoenix Ins. Co. v. Gardiner) 11 Wall. 204, 20 L. Ed. 112, there was a possibility of two grounds of decision, Federal and local, and this court declined to review the judgments. See also Tood v. Daniel, 16 Pet. 521, 10 L. Ed. 1054. * * * In Bachtel v. Wilson, 204 U. S. 36, 41, 42, 51 L. Ed. 357, 359, 360, 27 Sup. Ct. Rep. 243, we said, by Mr. Justice Brewer, that before we can pronounce a judgment of a state court to be 'in conflict with the Federal Constitution, it must be made to appear that its decision was one necessarily in conflict therewith, and not that possibly, or even probably, it was.' The case involved the consideration of a state statute which presented two questions, one of which, at least, presented no matter of a Federal nature, and in respect to each of which something might be said one way and the other, and until it was shown what the supreme court did in fact decide, it was impossible to hold that the section as construed by it was in conflict with the Federal Constitution."

And this has been approved and followed in *Plymouth Coal Co.* v. *Pennsylvania*, 232 U. S. 531, 58 L. Ed. 713 and *St. Louis S. W. R. Co.* v. *Arkansas*, 235 U. S. 350, 59 L. Ed. 265. In the last mentioned case Mr. Justice Pitney, speaking for the court, at page 369, said:

> "The present is an ordinary action to collect the tax as a debt, and not to forfeit the franchise for its non-payment. Non constat but that the state court will hold, when confronted with the question, that the franchise to be forfeited pursuant to Sec. 20 is confined to intrastate commerce. Such a construction is clearly foreshadowed by what the court has in this case held with respect to the general pur-

> pose of the act. And in exercising the jurisdiction conferred by Sec. 237, Judicial Code (36 Stat. at L. 1156, chap. 231, Comp. Stat. 1913, Sec. 1214), it is proper for this court to wait until the state court has adopted a construction of the statute under attack, rather than to assume in advance that such a construction will be adopted as to render the law repugnant to the Federal Constitution."

In *Plymouth Coal Co.* v. *Pennsylvania, Supra,* Mr. Justice Pitney, speaking for the court, after stating that it is proper for this court rather to wait until the state court has adopted a construction of the statute under attack than to assume in advance that a construction will be adopted such as to render the law obnoxious to the constitution, at page 546 said:

> "And, even aside from the consideration just adverted to, it is a general and fundamental rule that if a statute be reasonably susceptible of two interpretations, one of which would render it unconstitutional and the other valid, it is the duty of the courts to adopt that construction which will uphold its validity; there being a strong presumption that the law-making body has intended to act within, and not in excess of, its constitutional authority."

At page 32 of brief for plaintiff in error it is said:

> "There is a real difference in actual fact between the value at the point of production and the value at the point of sale, and these facts neither legislatures nor courts may lawfully ignore. The enhancement in value may result in part from cost of transportation, and in part from the possession of the transportation facility and the power thereby to place the gas in interstate commerce, and in part

> to the greater demand or more profitable uses to which it may be put in extra-state markets, and in part to other causes; but what ever its cause, the enhancement itself is a matter of solid substantial fact, and insofar as it results from the instrumentalities of interstate commerce, and transactions in such commerce, it is beyond the power of the state to tax."

Granting the argument, for the sake thereof, that there is a real difference in actual fact between the value at the point of production and the value at the point of sale, nevertheless such avails the plaintiff in error nothing here.

The value of live stock on the farms and ranches is reflected in and affected by the prices at which the owner, or the buyer from him, can sell the same in Chicago, Omaha, Kansas City or other markets, after the same have been put into and transported in interstate commerce; the values of cotton or tobacco on the plantation, of fruits in the orchard, of wheat and other grains and of wool on the farm, of lumber at the mill, of coal, ores and minerals at the mine, are all reflected in and affected by the prices at which the owners thereof, or the buyers from them, can sell the same in the markets after the same have been put into and transported in interstate commerce, all of which is of general experience and practical application; and therefore, farmers, fruit growers, planters, ranchers, manufacturers and producers inform themselves daily of the prices in the particular and peculiar markets into which their products go.

In *Schwab* v. *Richardson*, 262 U. S. 88, 68 L. Ed. 183, this court held that, notwithstanding that a franchise granted by the state to a corporation engaged in foreign commerce was enhanced in value by property and operations carried on beyond the limits of the state, does not

prevent the state from considering such enhanced value in imposing a franchise tax upon it.

It is further asserted in the brief for plaintiff in error that the value of the gas produced by it is augmented by its pipe line system before it enters interstate commerce. Granted, for the sake of argument, that the value is so augmented, yet, such neither militates against the act in question or adds weight to plaintiff's contention here.

The value of coal, iron ore and other minerals and the value of manufactured articles is also augmented by the owners' facilities and appliances for mining, manufacturing, assembling and preparing their products for market and by the facilities at hand, whether by common carrier or otherwise, for the transportation thereof to favorable markets. The Act of Congress regulating commerce expressly exempts transportation of natural or artificial gas by pipe line from the provisions thereof. Section 8563, United States Compiled Statutes. Neither the Public Service Commission of the state nor the Interstate Commerce Commission can require plaintiff to carry or transport gas, fix or prescribe rates for carrying the same, or fix or prescribe the prices plaintiff may demand and receive for gas in interstate commerce. While pipe lines for transportation of oil or other commodities, (except water, natural or artificial gas) and all railroads, express, telegraph, telephone and other companies are subject to state legislatures, the Congress, State Public Service Commissions or the Interstate Commerce Commission respecting fares, sales, charges, tolls, regulation and service, yet not so with the plaintiff. No doubt the control of 99 per cent of all the gas produced and purchased in the state and sold and transported out of it by plaintiff and the seven other companies having pipe lines augments the value of plaintiff's gas before it enters interstate commerce. Plaintiff and the other companies

having pipe line systems refuse to receive and carry gas except such gas as they produce and purchase, so that they may, and we submit do, largely dictate the price which producers without pipe lines must accept from them and, on the other hand, largely fix and determine the price which the buyer must pay to them. *But the point is that the value exists, even if so augmented, before the products of the mine or the articles manufactured or plaintiff's gas enter into interstate commerce.* We submit that this existing value is recognized and so held by this court in such cases and instances as *Heisler* v. *Thomas Colliery Co.*, Supra, sustaining a tax imposed by Pennsylvania of 1½ per cent of the value of anthracite coal mined, washed, or screened, or otherwise prepared for market, notwithstanding that the same was destined to have a market in other states; *American Mfg. Co.* v. *City of St. Louis*, Supra, sustaining a tax imposed by the City of St. Louis, under authority of the state, of $1 on each $1000 of sales made, notwithstanding that the major part of the sales were to be made and were made in interstate commerce; *Oliver Iron Mining Co.* v. *Lord*, Supra, sustaining a tax imposed by Minnesota, equal to 6 per cent of the valuation of all ores mined or produced, after making certain deductions from the value of such ore at the place where the same is brought to the surface, notwithstanding that practically all of the iron ore produced was under contract for delivery in other states and was destined for interstate commerce before mined.

In all of the cases relied upon by plaintiff the subject of the tax was engaged in, or itself was, foreign or interstate, or both interstate and intrastate commerce. In the instant case the subject is solely intrastate or local.

Counsel for plaintiff cite and rely on such cases as Alpha Portland Cement Co. v. Massachusetts, 268 U. S. 203, Atchinson &c R. Co. v. O'Connor, 223 U. S. 280, Crew Levick Co. v. Pennsylvania, 245 U. S. 292,

Dahnke-Walker M. Co. v. Bondurant, 267 U. S. 282, Eureka Pipe Line Co. v. Hallanan, 257 U. S. 265, Fargo v. Stevens, 121 U. S. 230, Galveston &c. R. Co. v. Texas, 210 U. S. 217, Int. Paper Co. v. Massachusetts, 246 U. S. 135, Lemke v. Farmers Grain Co., 258 U. S. 50, Locomobile Co. v. Massachusetts, 246 U. S. 146, Looney v. Crane Co., 245 U. S. 178, Ludwig v. W. U. Tel. Co., 216 U. S. 146, Meyer v. Wells Fargo Co., 223 U. S. 298, Missouri v. Kansas Nat. Gas Co., 265 U. S. 298, Pennsylvania Gas Co. v. Pub. Service Comm., 252 U. S. 23, People v. Saxe, 229 N. Y. 446, Phila. & S. M. S. S. Co. v. Pennsylvania, 122 U. S. 326, Pullman Co. v. Kansas, 216 U. S. 56, Ratterman v. W. U. Tel. Co., 127 U. S. 411, Shafer v. Farmers Grain Co., 268 U. S. 189, Western Union Tel. Co. v. Kansas, 216 U. S. 1, Western Union Tel. Co. v. Seay, (Ala.) 132 U. S. 472.

In all of such cases the subject of the tax was engaged in or itself was, foreign, or interstate, or both interstate and intrastate commerce. We will illustrate the point by referring to five of them.

(1) In *Crew Levick Co.* v. *Pennsylvania,* the tax under consideration was a mercantile license tax of one-half mill additional on each dollar of the whole volume, gross, of business transacted annually. Plaintiff was a wholesale merchant and sold from a warehouse in Pennsylvania merchandise to the value of about $47,000.00 to purchasers in the state and about $430,000.00 to customers in foreign countries. The state sought to collect the tax on all of the gross receipts.

(2) In *Eureka Pipe Line Co.* v. *Hallanan,* the tax was on the privilege of engaging in the business of transporting oil and natural gas by pipe lines, measured by 2 cents for each barrel of oil and 1/3 of 1 cent for each thousand feet of gas transported. A large part of the oil and gas was transported in interstate commerce so

that the tax there under consideration was a direct one on instrumentalities engaged in interstate and intrastate commerce. The principal question on which the decision turned was, what part of the oil or gas transported was in interstate.

(3) In *Galveston &c. R. Co.* v. *Texas,* the tax was on railroads for the transportation of passengers, freight and baggage equal to one per cent of their gross receipts. While lines of the railroads were within the state of Texas, yet they connected with other lines, and a part, in some instances much a larger part, of their gross receipts was received from the carriage of passengers and freight coming from, or destined to, points without the state. The railroads were engaged, therefore, in both local and interstate business. The state asserted its right to tax on receipts from both local and interstate.

(4) In *Phila. & S. M. S. S. Co.* v. *Pennsylvania,* the tax was on railroad, canal, steamboat and other companies for transportation of freight or passengers, &c. of eight-tenths of 1 per centum of the gross receipts. The receipts of the plaintiff were derived from freight and passage money between the Ports of Philadelphia and Savannah, and in foreign trade from New Orleans and a small amount for charter parties in the like trade.

(5) In *Western Union Tel. Co.* v. *Kansas,* the tax was one on the entire authorized capital of corporations. The plaintiff was engaged in extensive interstate business in a number of states with a relatively small amount of its capital employed in the state of Kansas in the relatively small intrastate or local business there.

An examination of all the above twenty-two cases relied upon by counsel for the plaintiff, will disclose that the subjects of the respective taxes or regulations were engaged in, or themselves were, foreign or interstate or

both interstate and intrastate commerce. In no instance was the subject wholly local or intrastate as in the case at bar.

So far as we have been able to find this Court has never condemned a state tax on the wholly local or intrastate business of mining or manufacturing, even though the products or commodities mined or manufactured were sold in interstate commerce and the tax measured by the amount of such sales.

Indeed this Court has held in Flint v. Stone Tracy Co., 220 U. S. 107, 55 L. Ed. 389; Home Insurance Co. v. New York, 134 U. S. 594, 33 L. Ed. 1025; United States Express Co. v. Minnesota, 223 U. S. 335, 56 L. Ed. 459; Kansas City F. S. & N. R. Co. v. Botkin, 240 U. S. 227, 60 L. Ed. 617; and Hump Hairpin Manufacturing Co. v. Emmerson, 258 U. S. 290, 66 L. Ed. 622, *as it could hold here*, in respect to the local business of producing natural gas, *that where the subject of the tax was within the legitimate power of the state, the tax might be measured by receipts which came in part from business of an interstate character, this Court drawing the distinction between laws directly burdening interstate commerce, and laws where the measure of a legitimate tax, within the power of the state, consists in part of the avails or income from the conduct of such commerce; this Court saying, in Flint v. Stone Tracy Company, that the adoption of this measure of the amount of such legitimate tax does no violence to the rule laid down in Galveston, H. & S. A. R. Co. v. Texas, 210 U. S. 217, 52 L. Ed. 1031. As Texas, Louisiana, Pennsylvania, Minnesota, and other states have occupation taxes upon those engaged in severing natural resources, the measure of such taxes has become an important matter for careful consideration.*

The second point of law and fact argued as ground for reversal is: *"The Act in question is void because in*

violation of the Fourteenth Amendment of the Constitution of the United States. The said Act deprives the plaintiff in error of property without due process of law, and denies to the plaintiff in error the equal protection of the laws.''

In the brief for plaintiff in error it is argued that the Act in question is void because in violation of the "due process of law" and the "equal protection of the laws" clauses of the Constitution of the United States. If the Act in question is void because it violates any clause of the Federal Constitution, then it follows, of course, that it also violates the "due process" clause of the Fourteenth Amendment. The Supreme Court of the United States has always shown a great and commendable reluctance to invalidate State statutes. It has not made the Fourteenth Amendment a weapon for assailing State power on a subject in which the State power is as wide and searching as that of taxation to support its own existence.

Does the Act in Question Deny Equal Protection of the Laws?

The Act treats alike all persons of the same class engaged in the business of mining and producing for sale, profit or use natural gas. Surely the state may impose taxes on different subjects. The right to the equal protection of the laws is not denied by a state when the same law or course of proceeding applies to all persons under similar circumstances and conditions. In many cases, such as tax laws, the legislature may classify persons and things in the administration of government. It does not follow that because one of a class is treated differently from one of another class, the equality clause of the amendment is violated.

> "It only requires the same means and methods to be applied impartially to all constituents of a class, so that the law shall operate equally and uniformly upon all persons in similar circumstances." *Kentucky Railroad Tax Cases*, 115 U. S. 321.

The State may classify subjects of taxation and apply different methods of valuation and taxation. The Amendment prescribes no rigid equality, but permits to the discretion and wisdom of the state a wide latitude. With its policy the Federal Government has no concern. It may tax one kind of property in one way and by one process of valuation, another in another, because they do not belong to the same class. It may tax one class of persons in one trade in one way, and another in another way. The state may tax some and exempt others if it is not forbidden by its Constitution. *Magoun* v. *Illinois*, 170 U. S. 283.

Substantially the same argument upon this subject was made by counsel for plaintiff before the Supreme Court of Appeals of West Virginia as is made here. That Court answered the argument in the following language:

> "In Bell's Gap Rr. Co. v. Penn., 134 U. S. 232, the same contention that plaintiff now advances here was made against the validity of a Pennsylvania taxation Act. But the Supreme Court held: 'The provision in the XIV Amendment, that no state shall deny to any person within its jurisdiction the equal protection of the laws, was not intended to prevent a State from adjusting its system of taxation in all proper and reasonable ways. * * * It may impose different specific taxes upon different trades and professions, and may vary the rates of excise upon

various products, it may tax real estate and personal property in a different manner; it may tax visible property only, and not tax securities for payment of money; it may allow deductions for indebtedness, or not allow them. All such regulations, and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the State Legislature, or the people of the state in framing their Constitution. * * * We think that we are safe in saying that the XIV Amendment was not intended to compel the States to adopt an iron rule of equal taxation.' This doctrine has been repeatedly affirmed. Express Co. v. Seibert, 142 U. S. 339; Clark v. Titusville, 184 U. S. 329; Armour Packing Co.—Lacy, 200 U. S. 226; Citizens Tel. Co. v. Fuller, 229 U. S. 322; Mich. Cent. Ry. Co. v. Powers, 201 U. S. 245; Heisler v. Thomas Col. Co., 260 U. S. 245. 'The selection of all who are engaged within the state in mining ore or producing ores on their own account, * * * as the subjects of an occupation tax is permissible.' *Oliver Iron Co.* v. *Lord*, 262 U. S. 245.

The charge that the statute imposes double taxation is also not well founded. 'Double taxation in a legal sense does not exist unless the double tax is levied upon the same property within the same jurisdiction. Plaintiffs in error pay one tax with respect to property, another with respect to the privilege or occupation: hence the taxation is not double.' Ohio Tax Cases, 232 U. S. 576 (593-4). The case of Dawson v. Ky. Dist. and Warehouse Co., 255 U. S. 288, relied on by plaintiff does not apply here. As distinguished by the Supreme Court in the Oliver Mining Co. case, the tax in the Dawson case 'was not laid on any business, but on the mere exertion by an owner of distilled spirits of his right to withdraw them from a bonded

warehouse and had none of the ordinary incidents of an occupation tax.'

The foregoing decisions uphold the right of the legislature to classify the subjects of taxation. When the right to classify is conceded, it necessarily follows that the legislature has the right to select the differences upon which the classification will be based. Citizens Tel. Co. v. Fuller, supra. No proof is offered that the classification of the statute is unreasonable. The statute makes no discrimination in favor of one as against another of the same class. We therefore see no repugnance in the statute to the Fourteenth Amendment." Record 263.

The Fourteenth Amendment is not violated on the mere ground of inequality in the actual results of the tax law. *Cotting* v. *Kansas City Stock Yards Company*, 183 U. S. 110. Neither is it violated when all under like circumstances are afforded equal protection in the enjoyment of their rights. *Yesler* v. *Washington Harbor Line Commissioners*, 146 U. S. 646.

In the recent case of *Swiss Oil Corporation* v. *Shanks*, decided by this Court on February 21, 1927, this Court held that the Fourteenth Amendment does not require uniformity of taxation, and that classification of property for purpose of taxation by a State does not violate the Fourteenth Amendment unless so palpably arbitrary and unreasonable as to render such classification invalid on its face. Classification by the states of subjects of taxation meets the requirements of the Federal Constitution so long as there is adequate and reasonable basis for the classification.

The deduction of $10,000.00 from the gross income as provided by the Act in question is assailed as arbitrary

and unreasonable classification. The Supreme Court of Appeals of West Virginia answered this question in the following language:

> "Plaintiff's third proposition is based on the provision in the Act for a deduction of $10,000.00 from the values or from the gross income taxed. Statutory exemptions from taxation are generally upheld when they apply alike to all property of the same class, and are not unreasonable or arbitrary. No facts are presented to show that this exemption is unreasonable. In Pipe Line Co. v. Hallanan, supra, an exemption from taxation of pipe lines under ten miles was under consideration. The court stated that as such lines were owned by small producers and were not used to any considerable extent in the regular business of transporting oil, these facts offered a 'reasonable basis for the classification thus made.' May we not as well say here that the mine which does not do a gross business of more than $10,000.00 a year is owned by a small producer, that such mine is not engaged to any considerable extent in the business of mining and that such facts furnish a reasonable basis for the exemption? The right of a legislature to classify subjects for taxation 'in terms of earnings instead of in terms of method and use' has also been directly recognized and approved by the Supreme Court. 'The Legislature, in the exercise of its power of regulating fares and freights, may classify the railroads according to the amount of the business which they have done or appear likely to do. Whether the classification shall be according to the amount of passengers and freight carried, or of gross or net earnings, during a previous year * * * is a matter within the discretion of the legislature. If the same rule is applied to all railroads of the same class, there is no violation of the constitutional provision securing to all the

> equal protection of the laws.' Dow v. Beidleman, 125 U. S. 680, (691). The immunity favoring gross incomes not exceeding $10,000.00 does not discriminate in favor of one, as against another of the same class, and therefore presents no arraignment of the right to classify. 'If the law operates upon every person within the relation or circumstances provided for, it is sufficient as to uniformity.' McAunich v. Rr. Co., 20 Iowa 338." Record 264.

In *Stebbins* v. *Riley*, 268 U. S. 137, 69 L. Ed. 884, this court held that a statute of the State of California forbidding the deduction of the Federal estate tax in fixing the amount of the state inheritance tax is not invalid as denying the equal protection of the laws, because it may result in the imposition of a much higher tax upon the residuary interest in a larger state than upon the interest of the same value in smaller ones.

We venture the suggestion that no tax law can be passed by the Federal or any State Government that will result in exact uniformity and equality. Tax laws generally, almost without an exception, make exemptions or deductions in favor of the small taxpayer. So long as the tax is uniform as to the particular class, or applies with equal force to all under like circumstances and conditions, it does not run counter to the Fourteenth Amendment. Under the Act in question, the value of gas produced is the measure of the tax and the amount of the tax is determined by applying the rate to the gross proceeds derived from the sale of such gas. The rate is uniform as to the class. The Act does not apply one rate to the large taxpayer and another rate to the small taxpayer. All producers of gas pay taxes alike after allowing the deduction of $10,000.00 from the gross receipts. Plaintiff in error argues that different prices

for gas prevail in different localities, and that it is not uncommon to find gas produced in the same field selling at different prices. This is conceded.

Further illustration is given by plaintiff of A and B producing gas on adjoining farms. A sells at the well for 5c a thousand, and B sells at the state line for 40c a thousand. Of course B pays more taxes than A, but he receives more for his gas. Many other illustrations are given in plaintiff in error's brief to the same effect. In the end, however, and as an answer, the amount of the tax is determined by an application of the rate to the gross proceeds which in every instance must and will result in uniformity as to the particular class affected.

The brief of plaintiff in error seems to suggest that in order to make the Act meet the requirements of the Fourteenth Amendment, a fixed rate must be applied to the amount of gas produced, or a uniform rate applied upon each thousand cubic feet of gas produced. Such was the argument in the court below, and such seems to be the argument here. If such a method was applied, the greatest of inequalities, hardships and burdens would result. For example, we will assume that the rate applied to each one thousand cubic feet of gas was 1c. Plaintiff in error sells its gas on an average price in the State of 30c. The tax would amount to 3 1/3 per cent of the gross income. Apply the same rate of 1c a thousand to the small producer, the farmer who sells his gas at 10c a thousand, and the State would take 10 per cent of the income. Such a tax system would be palpably unjust and unreasonable as between taxpayers of the same class.

An examination of the cases of *Cotting* v. *Kansas City Stock Yards*, 183 U. S. 79, and *Sperry & Hutchinson Company* v. *Melton*, 69 W. Va. 144, relied upon by plaintiff to support its contention that said act violates the

Fourteenth Amendment, will convince, we submit, that they are not in point.

In *Lake Superior Consolidated Iron Mines* v. *Lord*, 271 U. S. 577, 70 L. Ed. 1093, this court, speaking by Mr. Justice McReynolds, at page 582, said:

> "The remaining question is whether the legislature may treat ore lands as a distinct class of property and impose upon them a tax not extended to quarries, forests, etc., without depriving their owners of the equal protection of the laws guaranteed by the Fourteenth Amendment. And this question must be answered in the affirmative, under the principles announced in Heisler v. Thomas Colliery Co., 260 U. S. 245, 67 L. Ed. 237, 43 Sup. Ct. Rep. 83, where we sustained a tax confined to anthracite coal against the objection of arbitrary classification in that bituminous coal was not included. The State Legislature may exercise wide discretion in selecting the subjects of taxation (Oliver Iron Min. Co. v. Lord, 262 U. S. 172, 179, 67 L. Ed. 929, 936, 43 Sup. Ct. Rep. 526) so long as it refrains from clear and hostile discrimination against particular persons or classes (Bell's Gap R. Co. v. Pennsylvania, 134 U. S. 232, 237, 33 L. Ed. 892, 895, 10 Sup. Ct. Rep. 533). Certainly, ores differ as much from other products of the land as anthracite coal does from the bituminous variety, and ore gives character to appellant's holdings. Lands chiefly valuable for ore are depreciated by its extraction, and probably will yield less and less under an ad valorem tax as the mining continues. The situation is very different where the principal value depends on other uses which do not deplete. The selection of the business of mining only, for imposition of the occupation tax, was not arbitrary and, certainly, we cannot say

that the classification by the legislation now assailed was without any reasonable basis."

All of which is respectfully submitted.

HOWARD B. LEE,
Attorney General of West Virginia,

For Defendants in Error.

T. C. TOWNSEND,
FRED. O. BLUE,
Of Counsel.